

In Strict Confidence

TO: Wendi Delmendo, Chief Compliance Officer, UC Davis
FROM: Wendy Lilliedoll, University Investigator, UC Davis
DATE: May 14, 2017
RE: Report of Investigation, Case # HDAC170141

I. INTRODUCTION

The University of California is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of sexual violence and sexual harassment. When such allegations are brought to the University's attention, the University reviews them under the system-wide and campus policies on sexual harassment and sexual violence.

In the instant matter, Complainant, an employee, alleges that on Sunday, April 2, 2017 Respondent, an employee, placed his hand on Complainant's knee on top of her pants and slid it up her leg and under her [REDACTED] to her thigh; exposed his penis to Complainant; and grabbed Complainant's hand and pulled it toward his penis. Complainant also alleges that Respondent sent unwelcome text messages to Complainant's personal cell phone.

The alleged actions, if substantiated, may violate the local and system-wide policies on sexual harassment and sexual violence in effect at the time. On or about April 13, 2017, you charged me in your capacity as UC Davis Chief Compliance Officer and Title IX Compliance Officer to act as University investigator to review the above allegations.

Brief Summary of How Case Came to Title IX Office:

On April 10, 2017, Complainant met with an official from the Harassment & Discrimination Assistance and Prevention Program (HDAPP) and signed a statement regarding the allegations at issue here.

[REDACTED] Complainant received written notice of the present investigation by electronic mail on April 13, 2017. The notice letter to Complainant is attached here as [REDACTED]

Written Notice of Charges to Respondent:

Respondent was notified of the allegations against him by electronic mail on April 13, 2017. The notice letter to Respondent is attached here as [REDACTED]

Summary of Investigation Structure

I interviewed each party in person. One witness was interviewed over the telephone due to availability. On May 2, 2017, I received access to a series of documents I had requested and to available video footage from the date of the incident.

II. SUMMARY OF ALLEGATIONS

Complainant alleges:

- (1) Respondent touched Complainant's thigh over her pants and under her work [REDACTED]
- (2) Respondent exposed his penis to Complainant.
- (3) Respondent took Complainant's hand and pulled it toward his exposed penis.

- (4) Respondent sent unwanted text messages to Complainant's personal cell phone.

III. EXECUTIVE SUMMARY OF FINDINGS

With respect to each of the alleged actions, the preponderance of the evidence supports the following findings of fact:

- (1) Respondent touched Complainant's thigh over her pants and under her work [REDACTED]
Substantiated.
- (2) Respondent exposed his penis to Complainant: **Substantiated.**
- (3) Respondent took Complainant's hand and pulled it toward his exposed penis: **Substantiated.**
- (4) Respondent sent unwanted text messages to Complainant's personal cell phone: **Substantiated; however, the conduct was not sexual in nature.**

Although Respondent denied that the alleged touching and exposure occurred, the timing of events, the parties' relative motivations to provide a false account, the consistency of Complainant's account, and the nature of Complainant's reports support the allegations. Complainant reported the conduct soon after it occurred, and she maintained a consistent account of key facts throughout the process. The limited video available supported Complainant's account.

Respondent suggested that Complainant's report may have been motivated by her own [REDACTED], but the evidence does not support that motive: [REDACTED]

[REDACTED] In addition, even if Complainant had concerns about [REDACTED] the evidence did not suggest that a complaint regarding Respondent would benefit her. According to both parties, Respondent was offering to *assist* Complainant with [REDACTED], and neither party described him threatening discipline. In contrast, Respondent had a significant motive to deny the alleged behavior, and his version of events was not as well supported by reason and the video as Complainant's.

Furthermore, the people to whom Complainant initially reported the conduct stated that Complainant sought to avoid naming Respondent or getting him in trouble. Complainant also cited concerns about Respondent's financial wellbeing and [REDACTED] in her interview with me, which suggests that she did not have an improper motive in making her report. Complainant also credibly described fear of retaliation both in connection with rejecting Respondent's advances and as a result of her report, which also limits her motivation to make a false report.

Because the weight of the evidence supports that Respondent engaged in unwanted sexual conduct as alleged, and because that conduct was sufficiently severe that it created a hostile environment for Complainant, the preponderance of the evidence substantiates that Respondent's conduct violated the University's Sexual Violence and Sexual Harassment policy.

IV. INVESTIGATIVE BACKGROUND

A. Relevant Policy Provision: *UC Sexual Violence and Sexual Harassment policy (Effective January 1, 2016 to present)*

The UC system-wide Sexual Violence and Sexual Harassment policy prohibits “sexual harassment,” which the policy defines as follows:

2. Sexual Harassment:

- a. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when:
 - i. *Quid Pro Quo*: a person’s submission to such conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program; or
 - ii. *Hostile Environment*: such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person’s participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive.
- b. Consideration is given to the totality of the circumstances in which the conduct occurred. Sexual harassment may include incidents:
 - i. between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients);
 - ii. in hierarchical relationships and between peers; and
 - iii. between individuals of any gender or gender identity.

B. Witnesses

All interviewed witnesses were advised of the confidential nature of the investigation, the expectation of honest responses to all questions, and the University’s prohibition of retaliation for cooperating with an official investigation.

Name	Title	Date Interviewed
Complainant [REDACTED]	[REDACTED] Employee	April 21, 2017, in person
Respondent [REDACTED]	[REDACTED] Supervisor	April 25, 2017, in person
Supervisor A [REDACTED]	[REDACTED] Supervisor	April 21, 2017, by telephone

[REDACTED]	[REDACTED] Employee	May 1, 2017, in person
Manager [REDACTED]	[REDACTED] Manager	May 1, 2017, in person

C. Other Evidence Considered

Attachment A: [REDACTED]

Attachment B: [REDACTED]

Attachment C: [REDACTED]

Attachment D: [REDACTED]

Attachment E: [REDACTED]

Attachment F: [REDACTED]

Attachment G: [REDACTED]

Attachment H: [REDACTED]

Attachment I: [REDACTED]

Attachment J: [REDACTED]

[REDACTED]

D. Standard of Review

Each of the factual findings and policy conclusions reflected in this report is made on a preponderance of the evidence basis. "Preponderance of the evidence" means that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side.

V. SUMMARY OF EVIDENCE

A. Interview Summaries

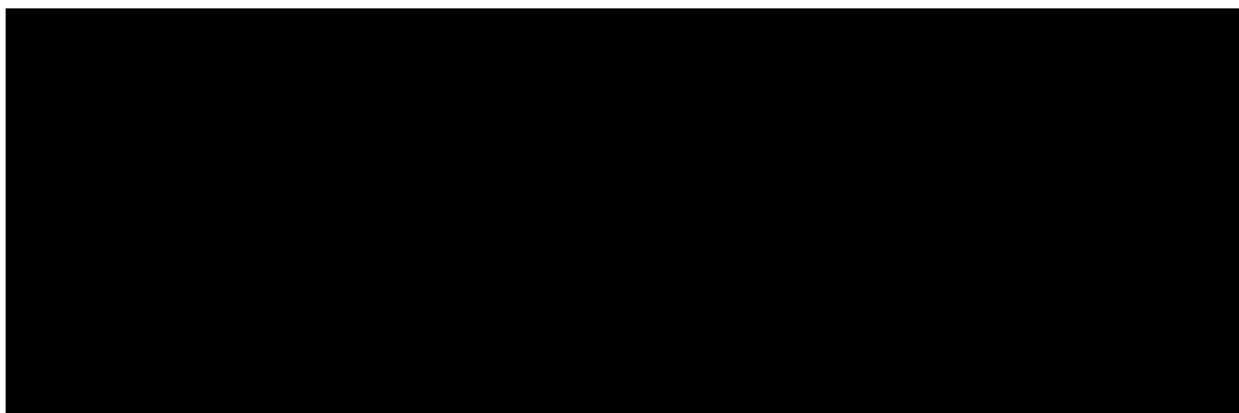
1. Complainant

[REDACTED]

[REDACTED] In the middle of her shift, she went to the [REDACTED] with Respondent to log her [REDACTED] transactions. The [REDACTED] is at the

1 [REDACTED]
2 [REDACTED]

end of a short hallway that also has the door to the supervisors' office. Complainant created the below diagram, which I labeled based on Complainant's interview statement:



After they finished in the [REDACTED], Complainant walked back down the hall to leave the area. Respondent went into the supervisors' office and told Complainant she could come hang out in there. Complainant went in and sat in one of the rolling chairs. Respondent sat in another rolling chair. At that point, Complainant did not feel like he was too close to her.



Then, Respondent told Complainant that she was no longer reporting to her then-current supervisor, that Respondent was going to be her supervisor and that if she needs anything, like any days off, he could work it out. At that point, Respondent scooted his rolling chair over to Complainant, put his hand on her leg, and slid it up under her [REDACTED]. During her interview, Complainant demonstrated with her own hand that Respondent slid his hand from down near her knee up to her upper thigh.

Complainant asked what Respondent was doing. She looked at the clock and said she needed to go [REDACTED] because she did not want to get in trouble with the new shift supervisor. Respondent replied, "No, it's cool. I'll call him and tell him I have to talk to you in the office." Complainant then said, "No, I have to go do the [REDACTED]." Respondent kept saying it was fine for Complainant to stay, and Complainant kept repeating that she had to go and that she had never met the shift supervisor before. She was trying to make excuses. Respondent asked why Complainant was "being so shy" and why she was "acting like this." Complainant stood up. Respondent stood up too and started unbuckling his pants. Then, he exposed himself. In response to a question about what Respondent was wearing, Complainant stated that she thinks Respondent was wearing jeans that day because she remembers seeing the red fabric around his zipper. Respondent grabbed Complainant's hand and pulled it toward his erect penis to try to put it on him. She grabbed the bottom of his shirt and pulled it down to cover his penis. Respondent kept asking why Complainant was being so shy and why she was acting like she was. She kept saying, "No, no. I don't want to do nothing." Respondent was between Complainant and the door to the supervisors' office. She walked past him and out that door. As she was going out through the hall door to go [REDACTED] to work, Respondent said, "For reals, though, if you need any days off, I can work it out."

In response to a question about what she understood Respondent to mean when he offered her days off, [REDACTED] She thought Respondent was suggesting that she could “help him out” and then he could help her out. She thought he was suggesting he could rearrange schedules to help her switch when she needed to. But, she added that she did not ask him what he meant, so she does not know for sure.

[REDACTED]
Complainant was reluctant to tell a supervisor because she did not want Respondent to get fired. [REDACTED]

Overnight on Sunday night, Complainant thought about it and decided that she needed to tell a supervisor what had happened, so she talked to [REDACTED] on Monday. She has not talked to any of her coworkers about this incident except [REDACTED]. She is worried that if people find out she reported Respondent, they will be angry with her because he has so many friends that work there.

Ever since then, Complainant has worried about whether she did the right thing. Years ago, Complainant and Respondent and others used to socialize after work so maybe he thought this was okay. At the same time, she couldn't not say anything. She was too uncomfortable at the idea of being around Respondent. She also was worried about having him as her supervisor. In addition to being generally uncomfortable, she was worried that because she turned him down he would feel stupid and would be mean to her. The Monday after the incident, Complainant believes Respondent was at work, but she ignored him. Complainant was scheduled to be off work the Tuesday after the incident. She stayed out Wednesday and Thursday as well. She used different excuses to miss those days, but she was out because she did not want to be there with Respondent.

Between the time of her report and the time of her interview, Complainant had not been back to the building where Respondent works. The unit Manager contacted Complainant ([REDACTED]) and told Complainant that she would separate Complainant and Respondent until they figured something out. [REDACTED] She has not heard anything else about being switched to Respondent's supervision. She recently heard that Respondent had been put on leave. [REDACTED]

In response to a question about recent contact from Respondent, Complainant noted that beginning in November or December and going through March, Respondent started occasionally texting her to ask what she was doing that night. [REDACTED], he would text her. She assumed that he wanted to go out like they used to, but she does not go out anymore. She assumed he wanted to go out in a group. She only responded once, and that response was just to ask if the message was from Respondent because she did not recognize the number [REDACTED]

Complainant is not aware of any other similar issues others have had with Respondent, and she has not submitted any discrimination or harassment complaints or had any complaints made about her.

2. Supervisor A

I interviewed [REDACTED] on April [REDACTED] 2017. We spoke over the telephone to accommodate Supervisor A's work and vacation schedule.

[REDACTED] reported that she officially supervised Complainant years ago. Now, when Supervisor A is the supervisor on duty, she oversees Complainant and the others on duty, but she does not do Complainant's timecards or evaluations. Supervisor A and Complainant are not friends outside of work.

Respondent and Supervisor A also just have a working relationship. Respondent works the [REDACTED] shift, and [REDACTED]. Prior to becoming a supervisor, Respondent had been a [REDACTED] and [REDACTED] occasionally had supervised him in that context.

On the Monday after the incident between Complainant and Respondent, Complainant came [REDACTED] and told [REDACTED] that she needed to talk privately. [REDACTED]

At that point, Complainant provided an account of the events from the previous day, which [REDACTED] summarized during her interview:

On [REDACTED] at around [REDACTED] p.m., Complainant had been in the [REDACTED] and Respondent had just [REDACTED] out from her [REDACTED] duties. The supervisors' office is right next to the [REDACTED], and Respondent asked Complainant to come into the supervisors' office, saying that he needed to talk to her. Complainant went into the office, and Respondent told her to have a seat in one of the two chairs. He sat down close to her in the other chair and said, "You know, I'm your direct supervisor now.³ If you need anything, let me know." At that point, Respondent reached over and put his hand under Complainant's [REDACTED] and on her leg.

Complainant started "freaking out." She said she needed to go [REDACTED] and go do the [REDACTED]. Respondent said no, that she should stay and he would call [REDACTED] and tell the supervisor that she was busy and had a meeting with him. She got up. Then he got up, unzipped his pants and exposed himself. Complainant freaked out and said, "I've gotta go do [REDACTED]." The door was shut, and she had to walk past him to leave.

Complainant went [REDACTED] and told [REDACTED] everything that had happened. As a result, [REDACTED] was really mad at Respondent.

During the conversation with [REDACTED] Complainant did not mention any touching by either party during the period when Respondent was exposed. Complainant also did not mention text messages or anything about any past interactions between the parties.

³ [REDACTED]

[REDACTED] Complainant
said that she did not want Respondent to get in trouble and to get fired, mentioning that he has a [REDACTED]

[REDACTED] never discussed these matters with Respondent. She watched him when she next saw him at work, and he was acting like “business as usual” until he said he would be right back and she never saw him again.

[REDACTED] stated that she is not aware of any other discrimination or harassment complaints by or about either Complainant or Respondent. She has never witnessed Respondent talking to Complainant, who often works in another building.

When this occurred, [REDACTED] expressed that she did not want to report to Respondent as her supervisor. [REDACTED]

[REDACTED] The manager separated Complainant and Respondent by sending Complainant to a separate building until Respondent was placed on leave.

3. Respondent

I interviewed Respondent in person at [REDACTED] on April 25, 2017.

[REDACTED] About a month before his interview, Respondent was in a meeting with managers and supervisors and received a list of new supervisory assignments. The list showed that Complainant was going to start reporting to Respondent for purposes of timecards and evaluations. Complainant was the only new person on the supervision list Respondent received soon

before the interaction at issue here. Otherwise he was going to continue to supervise most of the same people. The reason supervisor assignments were shifting was because they had hired two new supervisors.

On Sunday April 2, Respondent believes Complainant was working a [REDACTED] shift. For the first part of the shift she was doing [REDACTED], and she was going to be switching to working [REDACTED] in the [REDACTED]. Respondent stated that he most likely [REDACTED] her out after the first part of her shift. They went to her [REDACTED] and he used his supervisor card to run two reports. Next, they went to the back to the [REDACTED] room, initialed and signed off on the proper slips, and put the slips and one copy of the report into the [REDACTED] container.

The [REDACTED] room is through [REDACTED] that also leads to the manager/supervisors' office. After finishing in the [REDACTED] room, Respondent asked Complainant to come into the supervisors' office. She came in and he closed the door because he wanted to talk to her privately about her [REDACTED]. Even though there are [REDACTED] leading to the office, he would close the interior office doors to discuss private matters because certain [REDACTED] and leads have access to the back area and may come in through the first set of doors.

Respondent had just become Complainant's supervisor after knowing her for [REDACTED] years. She did not even know yet that he was going to be supervising her. Respondent asked Complainant how she was doing. He had noticed that she was looking stressed recently. [REDACTED]

[REDACTED] but that she should be aware that she needed to be careful with that because she could be going on a path where she could be getting written up. Now that he was her supervisor, he wanted to communicate with her because he did not want to have to do that. He told her that if she needed to take time off, he would try to work with her. Respondent added that he tells all of this employees the same thing. He also tells them that rather than calling in, he would prefer that they talk to him in advance if they think they are going to miss time. He wanted to be a supervisor that people could talk to because he has been in their shoes. He also knows that Complainant has [REDACTED] and that it can be tough. He told her that he wanted to let her succeed and that she should tell him if there was anything she needed.

After that, Complainant said that she needed to go [REDACTED] and do something. [REDACTED] Respondent added that he is not familiar with what she does [REDACTED] there, but she was going [REDACTED] to the [REDACTED].

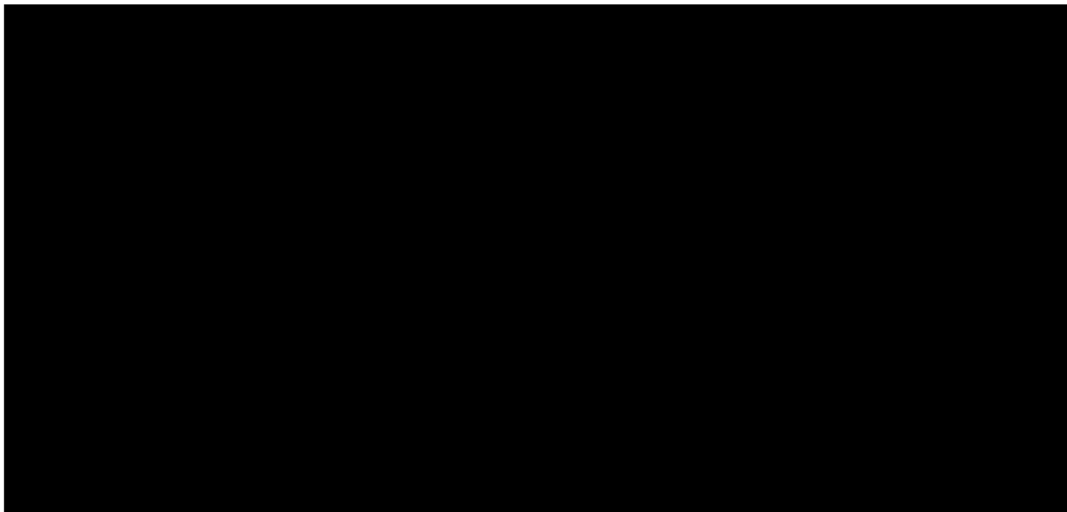
The last thing Respondent said as Complainant left was "Let me know if you need anything. I can help you out. I don't want you to be calling in. I know things can be stressful." Respondent reiterated that he tells all of his employees the same thing because he feels his employees can be a reflection of him. Respondent stated that one of the two new supervisors was working [REDACTED] on [REDACTED]. Respondent did not recall Complainant saying anything to him about wanting to make a good impression.

In response to a question about his knowledge of Complainant's [REDACTED] Respondent stated that he only knew that she had it from what she had said to him in the past. He did not know the specifics about why she had it. He knew she had been calling in because that is something the supervisors generally notice, even for others' employees. He had not had any prior conversations with his manager about Complainant's [REDACTED] and had not started seeing her timecards yet, so he did not know the specifics of her [REDACTED]. He also had not been looking at her files and did not know specifically whether she had received disciplinary action related to her [REDACTED] or was facing imminent disciplinary action. He believes that [REDACTED] was Complainant's previous supervisor. Her previous supervisor had not given Respondent a heads up to be aware of any issues with supervising Complainant, including related to her [REDACTED].

The unit gets call-ins every day from people who will be missing work. There are certain people who do most of the calling in. One of Respondent's direct reports, [REDACTED], was among the people who called in often. In response, Respondent called him in and shut the door and told him to let Respondent know if he felt things were coming on because his [REDACTED] may run out. [REDACTED] had gotten "dinged" in the previous performance evaluation Respondent completed because of his [REDACTED] [REDACTED]

[REDACTED]

The supervisors' office contains three chairs—two rolling chairs and one foldable chair. Complainant and Respondent were both in rolling chairs. Respondent created the below diagram, which I labeled based on Respondent's interview statement:



Complainant was by the manager's desk, and Respondent was right by the door. They were about six feet apart, and no one rolled in their chairs to get closer at any point. Respondent did not put his hand on Complainant's leg. He stated that he probably was wearing black slacks and a black belt with dress shoes. In response to a question about whether any of anyone's clothing came off in part, Respondent stated "absolutely not." There was no physical contact between the parties whatsoever.

Respondent stated that there was never any physical relationship between Complainant and Respondent in the past. They have been friends for over [REDACTED] years, and before he had [REDACTED] they used to go out in a group and have drinks, but nothing physical or romantic ever happened between them. [REDACTED]

[REDACTED]

⁵ [REDACTED]

The parties have not had any recent discussions over the phone. Respondent has sent her a few texts lately, but that was in response to Complainant suggesting that they should all go out to get away from the stress [REDACTED] and because it has been a while since they all went out. A couple of times Respondent texted her asking what was going on that night, but she would never text back. When Respondent pointed out that he had texted, Complainant would explain that she had the [REDACTED] or that she saw the text too late or that she did not want to go out. Respondent did not say anything inappropriate in any of the texts and never crossed the line. Most of the time his [REDACTED] was going out with him too or knew that he was going out with friends. He never crossed any line with Complainant.

Respondent has a good rapport with everyone and has never been accused of anything like this. He has been promoted. He is able to relate to people and get things done with people others have trouble working with. He is respectful and understanding. He has not had any arguments with Complainant or with others and has no idea why anyone would have said that he did what he has been accused of. This has been a “gut punch” that came out of nowhere to him.

In response to a question about any reason anyone might have made these allegations, Respondent stated that the only thing he can think of was that it was to deflect from issues that the person might have been having in the department. Regarding any motive someone might have to try to deflect in that manner, Respondent stated that he knows Complainant has been in trouble with [REDACTED]. He does not know if she was going to be terminated, but he knows she was en route to being written up. He has not looked at her file and had not even started getting her [REDACTED] yet, but he could assume that she would have been written up because of her [REDACTED].

In closing, Respondent stated that he was upset and stressed that someone could “slander [his] character and livelihood.” He thinks his character in the department speaks for itself. He is a [REDACTED] man who respects others as well as himself. [REDACTED]

4. [REDACTED]

[REDACTED] reported that he only knows the parties through work. [REDACTED]

[REDACTED] prior to this incident, he would have described his relationship with Respondent about the same as his relationship with Complainant. They had worked together for a long time. Since Respondent became a supervisor, he occasionally supervised [REDACTED] for a shift but never was [REDACTED] official supervisor for paperwork.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

She said that she had gone in to count money and that Respondent touched her and came onto her in the supervisors' office. She described Respondent saying that he was her supervisor now and she was under him. She said that they went into the office and Respondent was trying to grope at her and unzipped his pants. She was asking Respondent what the fuck he was doing. As she was telling [REDACTED] what happened, she was starting to come to tears. She asked [REDACTED] if he thought she should report what happened. He told her that she had to report and that if she did not, he was going to.

In response to a question about whether Complainant described any conversation with Respondent related to [REDACTED] [REDACTED] said that Complainant mentioned Respondent saying that if Complainant needed days off, he could work that out and should let him know. [REDACTED] thought, "That's not cool" because he felt like Respondent was using his scheduling ability and connecting it to sexual activity.

Complainant was stuttering as she talked, and was saying that she was uncomfortable working around Respondent. [REDACTED] told Complainant that she should not feel weird to go into work, and that if Respondent approaches her, she should get [REDACTED] or tell a supervisor that she did not want to be alone with him.

[REDACTED]

At the same time, even though Respondent was "a little flirty" as a person, [REDACTED] was not aware of any past interactions or relationship between Complainant and Respondent and would not have expected this.

[REDACTED]

[REDACTED]

[REDACTED] has seen Respondent but has not interacted with him beyond quickly saying hello because [REDACTED] is upset with him.

In closing, [REDACTED] expressed concern about why Respondent would have Complainant alone in the supervisors' office in the first place. He had the impression that they were counting money, which should have been done under a camera.⁷ Also, he knew of other situations where a supervisor was in the office with an individual of a different sex, and he believes there was always a third person in the room so that this type of situation would not happen.⁸

5. Manager

I interviewed Manager on May 2, 2017. [REDACTED]

Manager interacts with Respondent as a new supervisor in supervisor meetings. They also have a good professional working relationship but no relationship outside of work.

In the early afternoon on April 4, 2017, [REDACTED] came to Manager and said she needed to speak with her.⁹ [REDACTED] told Manager that on April 3, 2017 at approximately 10:30 a.m., Complainant had reported an incident that she said occurred at around [REDACTED] p.m. on Sunday as she was changing duties in the middle of her shift. [REDACTED] reported to Manager that Complainant had said the following:

- Respondent told Complainant she was reporting to him now.
- Respondent told Complainant to let him know if she needed anything.
- Respondent rubbed Complainant's leg under her [REDACTED]
- Complainant was nervous and said she needed to finish her work, at which point Respondent offered to call her supervisor to say that Complainant was meeting with him.
- Respondent exposed himself.
- Complainant said that she needed to do her [REDACTED] and left the office.

[REDACTED]

After the initial report, Manager was involved in adjusting schedules to separate the parties and putting Respondent on leave. Manager called Complainant to ask what she wanted in terms of her schedule, and Complainant said that she wanted to work away from Respondent, so Manager arranged to have her work at another facility where she commonly works and to change the parties' [REDACTED] schedules. Complainant also expressed that she was worried about Respondent gaining access to her address.

⁷ [REDACTED]

[REDACTED]

Manager also was responsible for meeting with Respondent to place him on leave. She read him a letter advising him about the leave. It did not specify the basis for the leave beyond that there was an allegation of inappropriate conduct in the workplace. [REDACTED]

[REDACTED] Manager said she did not have more information to provide and she informed him about the availability of ASAP services. Respondent did not speculate about the basis for the leave. [REDACTED]

[REDACTED] Respondent is on a paid leave.

In response to a question about the status of Complainant's change in supervision, Manager noted that they had been reassigning employees to supervisors to balance out assignments. Manager did not specifically remember that Complainant was on Respondent's list on the most recent draft as of April 2, 2017, but she can provide it.¹⁰ The March 21, 2017 draft list was not final, and they did not have a set date when the supervisory changes were set to be implemented. On the more recent version, Complainant is not reporting to Respondent.

[REDACTED]

If Complainant ultimately was officially reporting to Respondent and was having [REDACTED] issues that violated policy, Respondent might have been involved in corrective action, but that would typically happen in conjunction with a manager and would be after the reporting lists were final. Manager would not be concerned about a conversation between a supervisor and employee who was having [REDACTED] issues in which the supervisor asked the employee if she needed any work-related resources to allow her to do her job. However, Manager would not expect a supervisor to ask the employee to call them directly. There was a call-in line to report [REDACTED]

[REDACTED] If she was going to need to be out on a future date and could not find coverage to switch her shift, it might have been reasonable for supervisors to help identify someone who could switch shifts without, for example, accruing overtime. But, generally, Manager would not want supervisors to have employees calling them directly to report absences.

Manager does not recall speaking to Respondent about any employee's [REDACTED] including Complainant's, [REDACTED]

¹⁰ [REDACTED]

[REDACTED]

When Manager heard the present allegations her response “was really just ‘oh my goodness!’” She described it as disappointing to hear because everything she has heard about Respondent’s supervision has been really positive. She has not heard any complaints at all related to the issues alleged here. [REDACTED]

[REDACTED]

B. Documentary Evidence

I considered the following documentary evidence:

1. Notes of Intake Meeting with Harassment Officer

On April 10, 2017, an HDAPP official prepared and Complainant signed the following summary of events related to Complainant’s allegations:

Summary of Allegations:

[REDACTED] unzipped his pants and exposed his genital.

On April 2, 2017, around 3:00pm, [REDACTED] invited [REDACTED] into the supervisor’s office to “hang out”. [REDACTED] perceived the invitation as a friendly gesture by a former peer/current supervisor. When [REDACTED] entered the supervisor’s office [REDACTED] closed the office door and slid his chair closer to where [REDACTED] was seated. [REDACTED] told [REDACTED] if she need any days off to let him know and he will arrange it. [REDACTED] is aware of [REDACTED]. [REDACTED] placed his hand under [REDACTED] apron, on to her left leg above knee, and then slid his hand from her knee to thigh. [REDACTED] pushed away and stood up. [REDACTED] unzipped his pants, exposed his genitalia to [REDACTED] while grabbing her hand and pulling her hand to touch his genital. [REDACTED] grabbed [REDACTED] shirt and pulled it down over his exposed genital. [REDACTED] asked [REDACTED] “why are you so shy”... “don’t be shy, its fine”... “I will call downstairs to the supervisor and tell them you’re in the office with me”. [REDACTED] made multiple excuses of reasons why she needed to leave the office and get back to work. When [REDACTED] returned to her work area, she spoke with a trusted coworker/ [REDACTED] encouraged [REDACTED] to report the incident to supervisor [REDACTED]. On April 3, 2017 [REDACTED] reported the incident [REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

The parties exchanged the following text messages between December 6, 2016 and March 4, 2017:

Date	Sender	Message
December 6, 2016	Respondent	Hey
December 6, 2016	Respondent	Hey are you all Going out tonight?
December 6, 2016	Complainant	It's this [REDACTED]
December 6, 2016	Complainant	Is*
December 6, 2016	Respondent	What are you up to
December 6, 2016	Respondent	You guys going out tonight?
January 1, 2017*	Respondent	Hey anything going with you two tonight?
March 4, 2017*	Respondent	Hey

[REDACTED]

3. Video of [REDACTED] and Office Outside Supervisors' Office [REDACTED]

I reviewed video of the area surrounding the supervisors' office. Manager confirmed that there is no video camera inside that office. I also reviewed select video footage taken in the [REDACTED] hallways, but I did not identify noteworthy video taken in that area¹¹, and neither party identified key events in the [REDACTED] hallways. [REDACTED] summarizes the video footage taken in the [REDACTED] areas at and around the time of the alleged incident.

The video supports that the parties were together in that area from [REDACTED] p.m. until [REDACTED] p.m., as follows:

[REDACTED] p.m.: Parties in [REDACTED] under video. No indications of inappropriate conduct by either party

[REDACTED] p.m.: Parties appear to be talking, with Complainant standing in hallway under video and Respondent in supervisors' office.

[REDACTED] p.m.: Parties in supervisors' office with door open. Inactive computer screen is partially visible through doorway, but parties are not visible to camera.

[REDACTED] p.m.: Door closes from inside, with both parties still in the office.

[REDACTED] p.m.: Complainant exits the supervisors' office alone. A few feet down the hall, she turns her head back, evidently listening to Respondent, but she does not walk back toward the office. After approximately thirty seconds, she leaves the area through the hall door.

4. [REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
------------	------------

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI. FACTUAL FINDINGS AND ANALYSIS

A. Factual Findings

The preponderance of the evidence supports the following facts relevant to the analysis here:

1. Six or seven years ago, the parties would go out drinking together in a group outside of work hours. (Agreed).
2. Recently, Respondent sent Complainant a few text messages asking about her plans for the night, and she did not respond. (Agreed).

3. [REDACTED]
4. [REDACTED]
5. In a draft supervisory list dated March [REDACTED], 2017, Respondent was slated to become Complainant's supervisor. [REDACTED] Manager stated that those supervisory assignments never became final, and a more recent list created after the complaint reflects different assignments. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. Respondent had not yet begun reviewing Complainant's timecards or personnel records as of April 2, 2017. [REDACTED]
9. [REDACTED] on April 2, 2017, Respondent and Complainant went to the [REDACTED] to complete the [REDACTED] portion of her shift. (Agreed). They were in the [REDACTED] from [REDACTED] p.m. until [REDACTED] p.m. The room contains video surveillance, which did not reflect inappropriate conduct by either party.
10. After leaving the [REDACTED], Respondent asked Complainant to come to the supervisors' office. (Agreed).
11. Complainant stood in the doorway and talked to Respondent from [REDACTED] p.m. until [REDACTED] p.m., then entered the office. From [REDACTED] p.m. until [REDACTED] p.m., the door to the office was open, though the parties were not visible due to the angle of the camera in the hallway. [REDACTED]
12. Respondent closed the door to the supervisors' office. (Agreed). The door was closed from [REDACTED] p.m. until [REDACTED] p.m. [REDACTED]
13. Both parties were in rolling chairs, and Respondent was closer to the door. (Agreed).
14. While they were in the office talking, Respondent told Complainant that he would be supervising her, which she had not known. (Agreed).

15. Respondent talked to Complainant about her recent [REDACTED]. (Agreed).
16. Respondent told Complainant that if she needed to take time off, he would try to work with her. (Agreed).
17. He also told her that he wanted her to succeed and that she should tell him if she needed anything. (Agreed).
18. Complainant said that she needed to go [REDACTED] to do something related to the [REDACTED] portion of her shift. (Agreed).
19. The last thing Respondent said to Complainant as she left the area was something along the lines of "Let me know if you need anything. I can help you out. I don't want you to be [REDACTED]. I know things can be stressful." (Agreed).
20. **While they were alone in the office, Respondent put his hand on Complainant's knee and ran his hand up her leg to her upper thigh over her pants and under her [REDACTED]** (Complainant).

Although Respondent denied Complainant's allegation, the weight of the evidence supports that the touching occurred as alleged. The timing of events, the parties' relative motivations to provide a false account, the consistency of Complainant's account, and the nature of Complainant's reports support the allegations.

Both parties described Respondent instigating the interaction in the office, and the video supports that Complainant was planning to leave the area until Respondent called her back to the office. [REDACTED] As a result, Complainant would not have been able to anticipate the closed-door conversation. Further, she did not know that Respondent was going to become her supervisor until that conversation. Yet, according to both Complainant and [REDACTED], Complainant recounted the incident to [REDACTED] later in the April 2, 2017 shift. [REDACTED] estimated that Complainant first approached him looking "terrified" and asked him to talk between [REDACTED] and [REDACTED] p.m., i.e. within fifteen minutes to an hour of her interaction with Respondent. Even if Complainant had a motivation to fabricate an account regarding Respondent's conduct, she would have had limited time to develop such an account.

Furthermore, the evidence did not support that Complainant had a significant motivation to provide a false account regarding the incident. Respondent speculated that Complainant may have been trying to deflect from issues she was having in the department related to [REDACTED]

[REDACTED] In addition, according to both parties, Respondent was offering to *help* Complainant avoid issues related to [REDACTED]. Neither party described him threatening to discipline her. If Complainant genuinely were concerned about the prospect of future discipline associated with [REDACTED] one would expect her to solicit the assistance Respondent was offering, not to make a negative false report that likely would lead to his removal as her supervisor. The evidence did not suggest that Respondent had been responsible for any past discipline associated with Complainant's [REDACTED] or that she otherwise would harbor ill will toward him. Complainant stated that she reported Respondent's conduct in part because she was worried about Respondent supervising her after she had rejected his advance,

which would provide a reasonable basis for an accurate report, but does not establish a motive to make a false report.

In contrast, Respondent did have a significant motivation to deny the incident, regardless of what actually occurred. By the time he first recounted his version of the events in the supervisors' office, he was on investigatory leave and faced significant discipline. In addition, the broader context supports that Respondent's account was inaccurate. If Respondent's actions in the office truly were limited to the content Respondent described, the conversation appears to have been premature. According to Respondent's own account, he had not gained access to Complainant's [REDACTED] so he had only an anecdotal understanding of the situation at that time and would soon have better records. He had not talked to his supervisor or to Complainant's most recent supervisor regarding her [REDACTED] or his proposed strategy for addressing it. (Respondent). Although Respondent contended that he told Complainant that she could be going on a path where she could be getting written up, particularly given his knowledge that she had [REDACTED] [REDACTED], one would expect him to wait to have that conversation until he had evidence to support that statement.

The other situations Respondent cited in which he stated he had closed-door conversations with employees regarding [REDACTED] were distinct. With [REDACTED] Respondent described [REDACTED] issues that occurred while Respondent was [REDACTED] official supervisor. With [REDACTED] Respondent described addressing an issue that arose on a shift where Respondent was shift supervisor and had firsthand knowledge of the concern. [REDACTED]

[REDACTED] In addition, Manager questioned the appropriateness of elements of Respondent's approach, such as asking Complainant to contact him directly regarding her [REDACTED]. Furthermore, the fact that the door was open for the first ten minutes of the parties' conversation and closed for the last five minutes aligns more with Complainant's depiction of a communication that started out casual then progressed to a sexual advance than with Respondent's suggestion that his sole purpose for calling Complainant into the room was to discuss her [REDACTED] issues privately.

The key details in Complainant's account remained consistent over the course of her conversation with [REDACTED] her report to [REDACTED] her signed statement, and her investigation interview. [REDACTED] In each case, she described Respondent touching her, exposing himself, and telling her that she should let him know if she needed anything because he was her supervisor now.

Although the supervisors' office itself is not captured on video, Complainant's behavior on video in the hall after the interaction is consistent with having had an uncomfortable interaction with Respondent. [REDACTED] Although Respondent appears to have continued speaking to Complainant after she left the room, she spoke to him from the hall, whereas previously she had gone to the doorway and into the office to talk [REDACTED] [REDACTED]

[REDACTED] and saying that she was uncomfortable working around Respondent. Despite being unaware of any similar allegations regarding

Respondent and having purely professional relationships with both parties, after talking to Complainant soon after the event, neither [REDACTED] nor [REDACTED] doubted the accuracy of her report.

The context and content of Complainant's report also supports her account over Respondent's denial. Both [REDACTED] and [REDACTED] stated that Complainant was reluctant to report the incident officially because she did not want Respondent to get fired. Initially, she did not tell [REDACTED] that Respondent was the person who had engaged in the actions she was describing. Complainant expressed the same concerns about Respondent's livelihood and his [REDACTED] wellbeing to me during her investigation interview.

Finally, Complainant expressed concerns about retaliation in connection with her report. In her conversation with Manager, and again in her interview with me, Complainant expressed fear that Respondent's role as a supervisor may provide him [REDACTED] [REDACTED] individual concerns about retaliation corroborate the genuineness of Complainant's concern. The fact that Complainant reported Respondent's conduct in spite of retaliation concerns and without a clear benefit to come from a false report (as discussed above) provides further support for Complainant's account.

21. While they were alone in the office, Respondent unfastened his pants and exposed his penis to Complainant. (Complainant).

The same reasoning that supports Finding of Fact 20 also supports this finding. In addition, when I asked Complainant if she recalled what Respondent was wearing the day of the incident, she described Respondent wearing jeans with red fabric around the zipper. Although the zipper area was not visible in the video, Respondent was wearing jeans on April 2, 2017. [REDACTED] Respondent himself stated that he believed he was wearing black pants and black dress shoes, which suggests that Complainant's recollection of Respondent's pants was because she had noticed them, rather than because he always wears jeans. Complainant's credible description of Respondent's pants and zipper area provides further support for the finding that Respondent unfastened his pants and exposed his penis.

22. While they were alone in the office, Respondent took Complainant's hand and pulled it toward his penis. In response, Complainant grabbed the bottom of Respondent's shirt and pulled it down over his penis. (Complainant).

Complainant did not expressly describe Respondent grabbing her hand in discussing the incident with [REDACTED] or [REDACTED]. She did, however, report the conduct in her signed statement [REDACTED] and her interview. On balance, despite the fact that Complainant's report regarding this conduct occurred a few days later than her initial report, the weight of the evidence nonetheless supports this incident as well. Other than the timing of the report, the same reasoning that supports Findings of Fact 20 and 21 also supports this finding. In addition, Complainant's previous statements did not contradict her report regarding this touching.

23. Following these incidents, Complainant was visibly shaken; she missed work; and her schedule was adjusted so that she could work in another facility away from Respondent because she was uncomfortable being around him and feared retaliation.

[REDACTED]

Although the video after the incident does not show Complainant crying, she appears upset and is

not smiling in the video from the hallway or the limited video of her walking through the hall [REDACTED] minutes later.

[REDACTED] and when she called in on April 5 and April 6, she did not identify the interaction with Respondent as the basis for her absence. However, the evidence nonetheless supports that those absences were influenced by the incident with Respondent, as she stated they were. First, they were Complainant's first two work days after reporting the incident. Although Complainant had told Supervisor A about the incident, she had asked Supervisor A not to tell anyone, and she was concerned about retaliation because Respondent was popular with coworkers. Given her desire for discretion, it is not surprising that she did not cite the incident with Respondent in requesting the time off. [REDACTED]

[REDACTED] The timing led both Supervisor A and Manager to question whether the absences were connected to the incident. [REDACTED]

It is undisputed that Manager shifted Complainant's schedule and work location in response to this incident. Complainant's work location was shifted to a facility where she often worked. Manager made the decision in consultation with Complainant, who stated that she wanted to work in the other location because she wanted to be away from Respondent. However, [REDACTED] described Complainant being happy to be back at the main facility when he saw her there later (after Respondent had been placed on administrative leave). No one stated that Complainant preferred the other facility or had requested to be placed in the other facility separate from her desire to be away from Respondent.

B. Policy Findings

Conduct qualifies as sexual harassment in violation of University policy when the conduct (1) constitutes unwelcome conduct of a sexual nature and (2) creates a hostile environment or is *quid pro quo*. In the present case, the preponderance of the evidence supports that Respondent's conduct constituted sexual harassment in violation of the Sexual Violence and Sexual Harassment policy.

1. Respondent engaged in unwelcome sexual conduct as defined by University policy.

University policy defines sexual harassment to include "unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature." Here, Respondent's April 2, 2017 conduct toward Complainant in which he touched her leg, exposed his penis, and pulled her hand toward his penis constitutes a sexual advance and a non-verbal request for sexual favors. (See Findings of Fact 20, 21, and 22, above). The conduct involved activities that a reasonable person would clearly perceive as sexual in nature: touching Complainant's thigh and exposing and pulling Complainant's hand toward Respondent's penis. No one described any work-related or non-sexual reason for such conduct. Furthermore, Complainant's interpretation that Respondent pulled her hand with the intention of placing it on his penis was reasonable given that her hand was close enough to his penis that she was able to pull his shirt down to cover it.

There is no reasonable dispute that the conduct was unwelcome. Although Respondent denied the conduct itself, he corroborated Complainant's statement that she ended the interaction by saying she needed to get back to work and leaving the office. (Finding of Fact 18). Complainant described the conduct to [REDACTED] the same day and reported it to Supervisor A the following day, and [REDACTED] described her being visibly upset. (Finding of Fact 20). Complainant speculated that maybe Respondent thought his behavior was okay because of a past sexual interaction between the two of them. But that interaction (which Respondent denied) occurred six years earlier, and neither party described any sexual conduct between

the parties in the interim. In short, no evidence presented in this investigation reasonably supported that Respondent's conduct was welcome.

However, the weight of the evidence does not support that Respondent's texts to Complainant during the November to March 2017 timeframe constituted sexual conduct. On the one hand, Respondent's April 2, 2017 conduct supports a sexual motive for Respondent's prior contact with Complainant. On the other hand, the texts were not sexual on their face; they generally appeared to be directed at proposing a group get-together rather than a one-on-one meeting with Complainant¹³; and the parties had voluntarily gotten together in the past to drink, even if it was several years prior. Complainant herself stated that she believed the texts were directed at getting together as a group. As a result, although Complainant's acknowledged failure to respond supports that the texts were unwanted, and although Respondent's continued texting (particularly during periods when Complainant was out on [REDACTED] [REDACTED]) reflected questionable judgment for a supervisor, the weight of the evidence does not indicate that the texts themselves were sexual in nature.

2. Respondent's conduct created a hostile environment in violation of University policy.

Unwelcome sexual conduct violates University policy when it is *quid pro quo* or creates a hostile environment. *Quid pro quo* harassment occurs where "a person's submission to such conduct is implicitly or explicitly made the basis for employment decisions ... or other decisions affecting participation in a University program." Hostile environment harassment occurs where unwelcome sexual conduct "is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from ... employment ... and creates an environment that a reasonable person would find to be intimidating or offensive."

In the present case, the preponderance of the evidence supports that Respondent's conduct created a hostile environment for Complainant. Although the conduct was limited to a single incident, it was severe in that it involved touching and the exposure of a sexual organ. The evidence supports that the conduct interfered with Complainant's employment both on the day in question and going forward, as discussed in Finding of Fact 23, above. Complainant was visibly upset at work on the day of the incident, she missed work soon after the incident, and her schedule was changed to eliminate her contact with Respondent because of the incident. Although Complainant supported the schedule change, the evidence suggests that she did so out of a desire to avoid Respondent and because she feared retaliation, not because she preferred the revised schedule and work location. Furthermore, the weight of the evidence supports that Respondent's conduct created an environment that a reasonable person in Complainant's position "would find to be intimidating or offensive." Both the severity of the conduct and the prospective supervisory relationship between the parties support that a reasonable person would find the behavior both intimidating and offensive. Viewing the conduct in the light of the totality of the circumstances, as the policy requires, Respondent's conduct created a hostile environment in violation of policy.

Sexual conduct that creates a hostile environment violates the Sexual Violence and Sexual Harassment policy irrespective of whether the conduct also is *quid pro quo*. However, it is worth noting that elements of Respondent's conduct also create concerns about possible *quid pro quo* harassment. On the one hand, Respondent never officially became Complainant's supervisor and did not have particular authority regarding her [REDACTED]. In addition, both parties described Respondent continuing to offer to assist Complainant even at the end of the interaction (i.e. after she had rebuffed his advances). At the same time, Respondent held himself out as having authority regarding Complainant's time during the very interaction

[REDACTED]

at issue. In addition, given the close temporal proximity between Respondent's offers to help Complainant with her [REDACTED] and his sexual conduct, a reasonable person in Complainant's position likely would perceive that she would receive more favorable treatment from Respondent with regard to her [REDACTED] issues if she submitted to his sexual conduct. As Complainant put it, although she did not know what he meant when he offered to help, she believed Respondent was saying she could "help him out" by accepting his sexual advance and then he could help her out with her [REDACTED] issues.

VII. CONCLUSION

For the foregoing reasons, the preponderance of the evidence substantiates that Respondent violated the sexual harassment policy in the context of his April 2, 2017 interaction with Complainant.

Respectfully submitted,

[REDACTED]

Wendy Lilliedoll
University Investigator
UC Davis