

University of California EQUAL EMPLOYMENT OPPORTUNITY

IMPLEMENTATION of PROPOSITION 209: HOW IT AFFECTS UC'S EMPLOYMENT PRACTICES

Proposition 209 went into effect on August 28, 1997 and is now Section 31 of Article I in the California State Constitution. On November 3, 1997, after several lower court decisions, further appeal of Proposition 209 was denied by the U.S. Supreme Court, thus letting stand the law. Following is information regarding the impact of Proposition 209 on UC's employment practices and affirmative action.

TEXT OF THE PRINCIPAL PROVISIONS OF PROPOSITION 209 CALIFORNIA CONSTITUTION, ARTICLE 1, SECTION 31

The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.

For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

QUESTIONS & ANSWERS

1. Q: Does Proposition 209 apply to the University?

A: Yes, the University is specifically included in the new constitutional amendment's definition of the term "state".

2. Q: Who is affected by the employment provisions of Proposition 209?

A. The provisions apply to UC academic and staff employees and applicants for employment.

3. Q: What are the employment practices to which Proposition 209 applies?

A: Examples include selection, promotion, transfer, training and development, and other terms and conditions of employment.

4. Q: What is the University PROHIBITED from doing under Proposition 209?

A: UC may not consider race, religion, sex, color, ethnicity, or national origin in selection, promotion, or any other employment practice, unless such action must be taken to establish or maintain eligibility for any federal program.

5. Q: What is the University PERMITTED to do under Proposition 209?

A: UC must use race- or gender-neutral criteria in its employment practices. However, as indicated in the previous answer, UC is permitted to consider race, ethnicity, or gender if required pursuant to federal requirements. Federal regulations governing UC's affirmative action activities require the use of race, ethnicity, or gender in very limited circumstances, such as when analyzing the workforce to identify areas of underutilization of minorities and women and establishing goals, when underutilization exists, in affirmative action plans. When goals exist in a particular job for which recruitment is being conducted, UC undertakes recruitment efforts to include underutilized minorities and women in the applicant pool. Efforts could include sending job announcements to minority and women's organizations. However, a candidate may not be selected because of his or her race or gender.

6. Q. Can race, ethnicity, or sex be used as A FACTOR among other factors in selecting minorities or women for employment or for participation in training programs?

A. No. Any use of race, ethnicity, or gender as criteria for selection in hiring, participating in training programs, or any other employment practice conflicts with the new constitutional amendment

7. Q: Does Proposition 209 eliminate employment affirmative action at the University?

A: No. UC is a federal contractor and is obligated to comply with federal laws and regulations regarding affirmative action. These obligations include good faith efforts to create diverse pools of applicants for UC positions; developing and implementing affirmative action plans which identify areas of underutilization of minorities and women; and demonstrating good faith efforts to eliminate underutilization.

8. Q: How does Proposition 209 affect the University's employment affirmative action obligations?

A: The constitutional amendment permits "action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in loss of federal funds to the state."

9. Q: How does Proposition 209 affect hiring "preferences" for minorities and women?

A: Employment affirmative action does not require hiring "preferences" for minorities and women, nor are preferences appropriate under law. It has not been UC's policy to give preference to hiring minorities and women solely on the basis of race, ethnicity, or gender. UC's policy has been and continues to be to select the individual who possesses the qualifications to perform the duties of the position most effectively.

10. Q: Are there any situations in which race, religion, sex, color, ethnicity, or national origin can be considered?

A: Race, ethnicity, and sex are considered in setting affirmative action goals. As a federal contractor, UC is required to compare its minority and female workforce to minorities and women with requisite skills in the labor force. If there is under-utilization of minorities or women in the UC workforce as compared to the labor force, the University must set goals (not quotas) to correct the underutilization, and must make good faith efforts (not give preferences) toward achieving the goals. These factors can also be considered when planning a strategy for outreach, in order to create a diverse pool of applicants.

11. Q: How can good faith efforts towards meeting goals and remedying underutilization be achieved without taking into consideration race, ethnicity, or sex in hiring or training and developing employees?

A: Good faith efforts can be demonstrated by including outreach and recruitment efforts to include qualified minorities and women in applicant pools, to promote opportunities to participate in employee training and development programs, and to provide equal opportunity to compete for positions. Training is another tool that can be used to demonstrate that the workplace welcomes and supports diversity in the workforce.

12. Q. What are the University's current policies on employment affirmative action?

A. UC currently has two President's policies on affirmative action, entitled University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment; and Nondiscrimination and Affirmative Action Policy Statement for University of California Publications Regarding Employment Practices. These two policies state that in accordance with State and Federal law, UC does not discriminate on specified enumerated bases; undertakes affirmative action for underutilized minorities and women, for persons with disabilities, and for Vietnam era veterans, special disabled veterans and recently separated veterans; and prepares and maintains written affirmative action plans. In addition, UC has academic and staff personnel policies covering nondiscrimination and affirmative action, as well as personnel policies relating to affirmative action, such as policies on recruitment, selection, promotion, and employee development. These personnel policies are consistent with applicable State and Federal law.

13. Q: How have employee training and development programs at the University been affected by Proposition 209?

A: Those training and development programs which in the past have solely targeted underrepresented minorities and women are now open to all employees, regardless of race, religion, sex, color, ethnicity, or national origin. Advertisements for fellowships and other development opportunities now indicate that all qualified employees are welcome to apply.

Federal regulations require that action-oriented programs be developed to remedy underutilization of minorities and women. UC will continue to develop such programs, but the programs will be open to all employees.

14. Q: Can recruitment advertisements for University positions encourage minorities and women to apply?

A: Yes. Recruitment advertisements may continue to state that the University is an "Equal Opportunity/ Affirmative Action Employer." It is also acceptable for advertisements to state that "all qualified applicants are encouraged to apply, including minorities and women." In addition, advertisements should include a statement that reflects UCSC's commitment to diversity such as: "As an employer, UCSC strongly supports diversity in all its forms and strives for an inclusive community that fosters an open, enlightened and productive environment."

15. Q: Will managers still need to be accountable for meeting affirmative action objectives?

A: Yes. Managers are responsible for making good faith efforts toward achieving affirmative action goals.

16. Q: How can a diverse University workforce be achieved without taking into consideration race, ethnicity, sex, etc.?

A: Although the new constitutional amendment prohibits consideration of race, ethnicity, gender, etc. in UC's employment practices, the Regents support outreach and recruitment efforts as a means for achieving workforce diversity. By making efforts to reach and recruit qualified minority and women applicants, UC can make progress towards achieving a diverse workforce through affirmative action.

17. Q: What is the difference between "affirmative action" and "diversity"? How does "affirmative action" relate to "diversity"?

A: As discussed in a previous answer, affirmative action is a legal obligation for UC as a federal contractor. Affirmative action refers to specific efforts undertaken by the University, such as supplemental recruitment, designed to promote equal employment opportunity and to create diverse pools of applicants for University positions. Affirmative action is applicable to minorities, women, individuals with disabilities, Vietnam-era veterans, special disabled veterans, and recently separated veterans, although the setting of goals for correcting underutilization applies to minorities and women only.

Workforce diversity is an organizational and managerial process for developing an environment which maximizes and values the potential of all employees. Diversity is a desirable and organizational objective but is not a federally mandated obligation. A diverse workforce is one which reflects all demographic groups that comprise the general population, encompassing race, ethnicity and gender as well as religion, national origin, age, physical/mental abilities, marital status, parental status, sexual orientation, socioeconomic level, educational background, lifestyle, and all other demographic characteristics.

Diversity is broader in its implications than affirmative action because it encompasses all individuals in the various demographic groups found in the general population.

18. Q: In general, what are the modifications that should be made to the University's hiring practices as a result of Proposition 209?

A: The following chart displays the modifications to the University's hiring process that should be made to comply with the new constitutional amendment.

Modifications to the Steps in the University's Hiring Process that Affect Compliance with Proposition 209

		<u>Modification to Steps</u>	
T	Gather Availability & Utilization Data	←	Remains the same
I	Diversity/Cultural Competence Education for Faculty and Staff Who Have Appointment Authority	←	Strengthen
M	Outreach Activities to Enhance Diversity of Applicant Pools	←	Strengthen
E	Training, Mentorship and Other Special Programs for Potential Appointment of Promotion	←	Eliminate Race, Gender Criteria
L	The Appointment/Hiring Decision	←	Eliminate Race, Gender Criteria
I	Monitoring Diversity and Underutilization of Faculty and Staff	←	Strengthen
N	Evaluation of Those with Appointment Authority Regarding Good Faith Efforts	←	Strengthen
E			

Revised 7/03