

Annual Report 2015-2016



Office of the Ombuds



University of California
San Francisco



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The Mission of the Office of the Ombuds is to humanize the experience of working and learning at UCSF by providing a confidential, impartial, informal and independent problem solving resource that includes mediation and group facilitation services to members of the diverse UCSF community predicated on the principles of fairness, equity and respect.





Executive Summary

The Office of the Ombuds fulfills one of the responsibilities in our charter by publishing this Annual Report to provide upward feedback to UCSF as an early warning system of potential challenges and risks. In this report, we describe the role and ethical standards of the Office of the Ombuds, the different services we provide, the collaborations we participate in, and how we differ from other UCSF resources. We report statistical data on the number and types of cases we see, offer comparative data for the last three fiscal years, and calculate potential costs of associated risks. We also fulfill one of the most specific responsibilities of the Office of the Ombuds: to report systemic organizational trends and suggest recommendations.

The total number of Ombuds cases for 2015-2016 is 541, a 19.7% increase from the previous year. The breakdown by visitor type is: Staff 41%, Managers/Supervisors 27%, Faculty 23%, Students 4%, Trainees 4%, and Other 1%. In addition, we trained 1,522 people in 53 trainings, a 24.5% increase in total people trained from the previous year.

Forty-five percent of our visitors identified risks they would consider if their conflicts could not be resolved informally through Ombuds services. Successful outcomes resulted in the potential for significant savings to the institution in the 2015-2016 fiscal year, avoiding the cost of absenteeism, grievances, litigation, high risk safety issues, staff turnover, and diminished productivity for the individual and their team.

Considering all visitors, the top 10 issues reported by visitors for 2015-2016 are: respect/treatment, communication, work style, departmental/organizational climate, trust/integrity, use of positional power/authority, organizational change, role clarity, recognition, and leadership/management quality and capacity.

Based on visitor data and observations, The Office of the Ombuds reports the following organizational, systemic themes:

- lack of respect and poor treatment
- abrasive conduct
- lack of clarity of process and timeframes of staff and academic personnel policies and procedures
- perceived or actual discrimination
- management of institutional change

The Office of the Ombuds recommends the following to address the challenges in our University environment:

1. Leadership take a “no tolerance” stand on disrespect/incivility in the workplace and classroom.
2. Expand current training on addressing abrasive conduct and bullying, including a focus on bystander behavior. Setting new norms requires the development of new skills. Department Chairs, faculty members, and senior administrators should lead in establishing norms of conflict competence and workplace civility.



Executive Summary (continued)

3. Improve strategies for all faculty, managers, supervisors, and leaders to receive regular meaningful feedback and for others to provide feedback without the threat of retaliation.
4. Support accountability for abrasive conduct through a well-staffed, efficient, transparent process for addressing allegations of abrasive behavior/hostile work environment.
5. Develop a central location/website for outlining the various grievance processes for how and where to file a complaint, what to expect and who is available as a resource to contact.
6. Implement a Workplace Bullying Prevention policy to specifically address abrasive/bullying behavior.

While we recognize the extraordinary work being done at UCSF, a commitment to name and address the challenges can help us all live the PRIDE Principles that we espouse and that support our mission of excellence in patient care, education, and research.

P for Professionalism, how we conduct ourselves and our business

R for Respect for our patients, families, ourselves and each other

I for Integrity, always doing the honest, right thing

D for Diversity, understanding and embracing diverse beliefs, needs and expectations of our patients, community and employees

E for Excellence, what we strive for in everything we do



The Role of the Office of the Ombuds

Who are we and how we work

The Office of the Ombuds serves a unique role at UCSF, supporting faculty, staff, students, postdoctoral fellows and other trainees at both the Campus and Medical Center. Ombuds staff also work with individuals who partner with UCSF in delivering services (e.g. San Francisco Department of Public Health personnel who work at Zuckerberg San Francisco General, at the Veteran's Administration, or collaborators at the State Health Department.) Although Ombuds staff are UCSF employees, the Office maintains a level of independence and adheres to an independent charter (see Appendix I). This wide-ranging scope affords the Ombuds a uniquely broad perspective with respect to the issues and concerns voiced across the institution. In FY 2015-16, Maureen Brodie was named interim Director; Ellen Goldstein (Ombuds), Rita Callahan (Ombuds), and Charleane Williams (Program Coordinator) complete the team.

The Charter, adopted by the Office of the Ombuds in 2011 (see the Charter in Appendix I), defines our operating practices and commits us to the International Ombudsman Association (IOA) Standards of Practice and Code of Ethics. Adherence to these principles is as critical to our professional standards as HIPPA protections are to those who provide patient care or handle protected health information. Our adherence to these Standards of Practice protects our visitors, supports our staff's professional certification, and ensures the institution is best served by this unique conflict resolution service.

“ Thank you for helping to bridge a stronger collaborative relationship between both parties. ”
- Staff member

IOA and UCSF Office of the Ombuds Standards of Practice

Confidentiality

The Ombuds holds all communications with those seeking assistance in strict confidence and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

Informality

The use of the Ombuds is voluntary. The focus is on alternative methods to resolving problems other than formal institutional procedures. The Ombuds does not participate in any formal adjudicative or administrative procedure related to concerns brought to our attention. The Office has no decision-making authority and maintains no official records.

Neutrality and Impartiality

The Ombuds, as a designated neutral, remains unaligned and impartial. We do not engage in any situation which could create a conflict of interest, maintaining no personal stake in the outcome of any dispute. The Office of the Ombuds promotes a fair process but does not advocate for individuals.

Independence

The Ombuds Office is independent in structure, function and appearance to the highest degree possible within the organization. The Ombuds Office does not serve as an office of notice.

Upward feedback

In addition to providing conflict resolution services to the campus, the Office of the Ombuds serves UCSF by providing upward feedback on themes from the cases we address. In this way, we can alert leadership to potential challenges facing the institution without compromising individuals' confidentiality, reporting on themes in the aggregate. By identifying systemic trends in complaints, we provide an "early warning" system to leadership in support of institutional efforts to humanize the work and learning environment at UCSF. Upward feedback is delivered at the institutional level and unit level, helping to address a pattern where it can best be addressed. The provision of upward feedback ensures that we not only serve the individuals and groups who make up the institution, but that we serve UCSF as a whole.

Nine of the 10 University of California (UC) campuses have an Ombuds Office, and these offices meet regularly to consult on best practices, discuss the Ombuds implications of Federal initiatives (e.g., Title IX) and address concerns across the UC system. This year, we've participated in the updating of the [*University of California Best Practices for Ombuds Offices*](#) document.

Similarities and differences to other UCSF resources

We're frequently asked how the Office of the Ombuds is similar to or different from other resources within UCSF. Although there is some overlap (workplace problem-solving on interpersonal concerns), we do fill a unique niche with specific professional standards and expertise. As of February 2015, all Ombuds at UCSF have achieved certification as Certified Organizational Ombudsman Practitioners (CO-OPs) through the International Ombudsman Association (IOA).

Unlike Human Resources, the Office of the Ombuds provides off-the-record services and is not an office of notice for the University. Additionally, our neutrality allows us to explore all options with visitors. While we recognize the value of formal routes for conflict resolution complaints, our services provide the UCSF community with an alternative that may be explored before (or even after) a formal option is exercised, potentially allowing parties to come to a satisfactory resolution between themselves. Through these means, we promote UCSF-wide conflict competence, one person, dyad or team at a time.

Traditionally, Employee Assistance Programs provide counseling services on a variety of personal issues such as stress and physical or mental health concerns that may be affecting job performance. The UCSF Faculty and Staff Assistance Program (FSAP) is staffed by clinical psychologists, and we refer visitors to FSAP to receive counseling services. In contrast, Ombuds offices traditionally address individual, team or departmental concerns from a conflict management approach that is based on mediation principles of impartiality, confidentiality, balance and self-determination, and voluntary participation, consistent with the Ombuds and Mediator Code of Ethics and Standards of Practice. With respect to clients, FSAP serves faculty, staff, fellows and postdoctoral trainees; the Student Health Service serves professional and graduate students, while the Office of the Ombuds serves all of UCSF.

“Thanks so much for your collaboration on the meeting last night. I have heard consistent spontaneous feedback from faculty about how much they got out of the meeting and their appreciation of your facilitation. I very much appreciate your help and spirit.”

- Chair

Accessibility

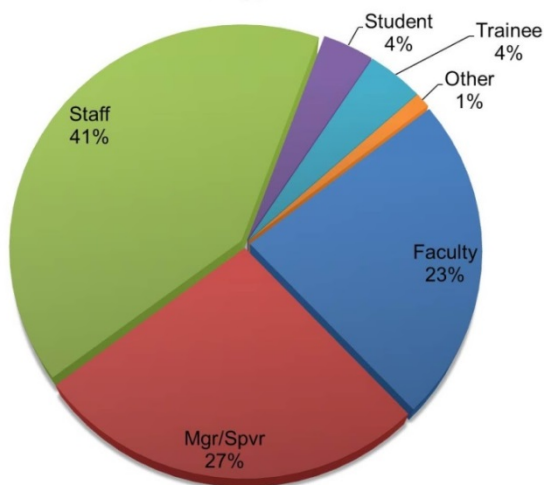
To facilitate use and address barriers to accessing services, Office of the Ombuds staff travel to and hold appointments at the multiple UCSF campuses and hospitals. Although our main office is at Laurel Heights, with swing space at Parnassus, we also meet with visitors* at Mission Bay, Zuckerberg San Francisco General, Minnesota Street, and other locations. This flexibility is especially important for visitors whose schedules make traveling to the Office of the Ombuds impossible.

** A visitor is defined as someone who seeks services from an Ombuds.*

Visitor Status: 2015-2016

(Ombuds Cases Only)

n = 541



Office of the Ombuds Services

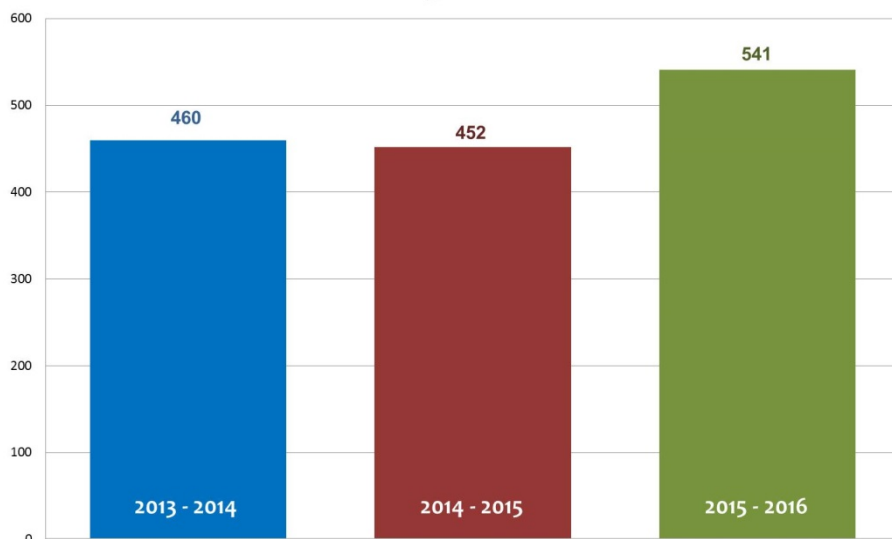
Individual services, mediation, and group facilitation

The Office of the Ombuds provides a variety of services ranging from a single consultation to a sequence of services.

An “Ombuds case” is defined as an intake where a “visitor” meets with an Ombuds to receive confidential services of consultation, coaching, referral, mediation (two-party or group) or group facilitation regarding a conflict. In 2015-16, our office increased the number of Ombuds cases by 19.7% over the previous year.

Ombuds Case Activity

2013 - 2016



“Your advice was spot on. The discussion went great. The best help was that you told me to stop, give time and listen. I realized that I really need to do that more – give others time to collect their thoughts, reflect (and not fill the void with words). That made all the difference.”

-Faculty member following a coaching session

Description of services

Intake/Consultation

All visitors begin with an intake to clarify their concern. Initial services may include: clarification of a policy or procedure, referral to other campus resources, or contact with other UCSF resources on the visitor's behalf with their permission.

Coaching

We often work with a visitor to explore their options by coaching for resolution, which may include: discussion of formal vs. informal processes; exploration of options and implications of choosing various options; building conflict management skills, including managing self; or preparation for mediation or a group process.

Two-Party or Multiple Party Mediation

Mediation is a non-adversarial, structured process facilitated by an impartial third party who assists the parties in moving to an understanding or agreement. Mediation begins with an individual intake meeting with each participant. Once the intake meetings have been completed, the parties are brought together for one or more sessions. Group mediation is customized to meet the needs of a particular group.

Of the 541 visitors
seen in FY 2015-16,
57% (n=311) received
mediation or group
facilitation services.

Group Facilitation

When an entire group is engaged in or affected by a conflict, we often provide services at a group level. Interventions may focus on promoting group decision-making, addressing the “elephant in the room” where a conflict has not been addressed, improving team morale and working relationships, or skills-building for managing conflict more efficiently and proactively. Group facilitation takes many forms, tailored to the needs of the group. One option is to follow a sequence: initial individual meetings with all parties who voluntarily engage in the process, synthesis of individual meeting themes, sharing themes with leadership and the full group, and discussion of proposed strategies to address key issues. Other times, group facilitation may be more of a facilitated conversation, group problem-solving or decision making session, or the development of group agreements or communication and conflict management protocols.

Our services are tailored to meet the needs of our visitors, while maintaining our Standards of Practice.

“ Thank you for your help to improve the relationship between my employee and me. I think it has helped a great deal. I have greater insight into how she relates to me and how I can change my interactions with her to be more positive. ”

- Manager after a mediation with her direct report

Workshops & Trainings

Interactive sessions support conflict management skills-building to address existing issues or promote professional development and team-building and can be sequenced to meet the evolving needs of a group.

Over the past three years, the Office of the Ombuds increased its reach via training members of the UCSF community, endeavoring to equip people with the skills and tools necessary for addressing conflicts within their own units or teams.



Training and Workshop participants say:

“After the training, there have been three different conflicts that were resolved by staff on their own.”

“Thank you very much for your presentation today. It was very well received and definitely a catalyst for productive conversation afterwards.”

Selected topics:

- Art and Science of an Apology
- Conflict Coaching 101
- Conflict Competence as a Core Leadership Skill
- Perfect Phrases for Dealing with Difficult People
- Style Matters
- Thomas-Kilmann Conflict Mode Instrument
- Taking the Difficult out of Difficult Conversations
- Developing Your Team Communication Protocols
- Effective Communication Skills
- Giving and Receiving Feedback
- True Colors temperament assessment
- Team Building (customizable facilitation for teams)
- Managing Workplace Conflict
- Developing Emotional Intelligence

Outreach

The Office of the Ombuds services are publicized through focused outreach meetings with organizational units; participation at campus events such as Faculty Development Day, student orientations, and resource fairs; and during trainings and workshops to faculty, staff, and learners.

Professional Consultation

Members of the Office provide consultation on provision of Ombuds services to outside organizations, collaborate on developing conflict management competency within UCSF, and serve on committees where issues directly relevant to the mission of the Office are addressed.



Collaborations

During FY 2015-16, members of the Office of the Ombuds provided conflict management subject matter expertise to the following collaborations:

Conflict Rx

Through grant funding from the Arthur Vining Davis Foundation, this interactive, on-line video-intensive learning tool was completed under the direction of Michael Wilkes, M.D., PI at UC Davis for implementation at health professional schools across the UC system and nationwide. Maureen Brodie served as an active participant on the project, providing subject matter expertise.

Interprofessional Education Curriculum Development Work Group

UCSF is dedicated to the advancement of IPE education, and the first level of the Core Principles of Interprofessional Practice program provides students with early exposure and experience collaborating with other healthcare professional students in small groups in the classroom setting. Maureen Brodie served as a faculty co-lead to the development and delivery of a module on “Conflict Management and Negotiation.” The curriculum is delivered using a “flipped classroom” format with online modules that are complemented by a facilitated small group session in which students apply knowledge and practice skills learned in the online module. All first and second-year students from Dentistry, Medicine, Nursing, Pharmacy and Physical Therapy participate in this curriculum.

School of Medicine Leadership Development Program

Under the direction of Richard Secunda, the School of Medicine offers a Leadership Development Program for 20 staff participants. The program goals are to increase understanding of how to lead in our unique and complex environment and at the same time broaden the participant perspective about how they might grow their careers at UCSF. The Ombuds Office provided trainings on True Colors, a style instrument, and Difficult Conversations, with application to leadership challenges faced in the UCSF environment.

School of Medicine Professionalism Learning Community

The Ombuds Office continues to contribute trainings to the PLC relevant to their charge to provide trainings upon request on topics pertaining to the development and enhancement of professionalism. In collaboration with Maria Wamsley, M.D., a training, “In the Moment: Navigating Challenging Communication”, was presented to nurse managers at the medical center.

Annual Colloquium on Abrasive Conduct in Higher Education

Together with The Gladstone Institutes, the Ombuds Office co-hosted the annual two-day meeting in June 2016 of the *Consortium on Abrasive Conduct in Higher Education* (CACHE) that brings together a range of college and university faculty, administrators, HR/LER representatives, ombudspersons and other relevant professionals to discuss the challenge of managing abrasive or bullying behavior in higher education. Members of UCSF participated as panelists or attendees and came away with the current thinking on best practices to address and implement on individual campuses – and in the case of the University of California – at the systemwide level.

Visitor Concerns

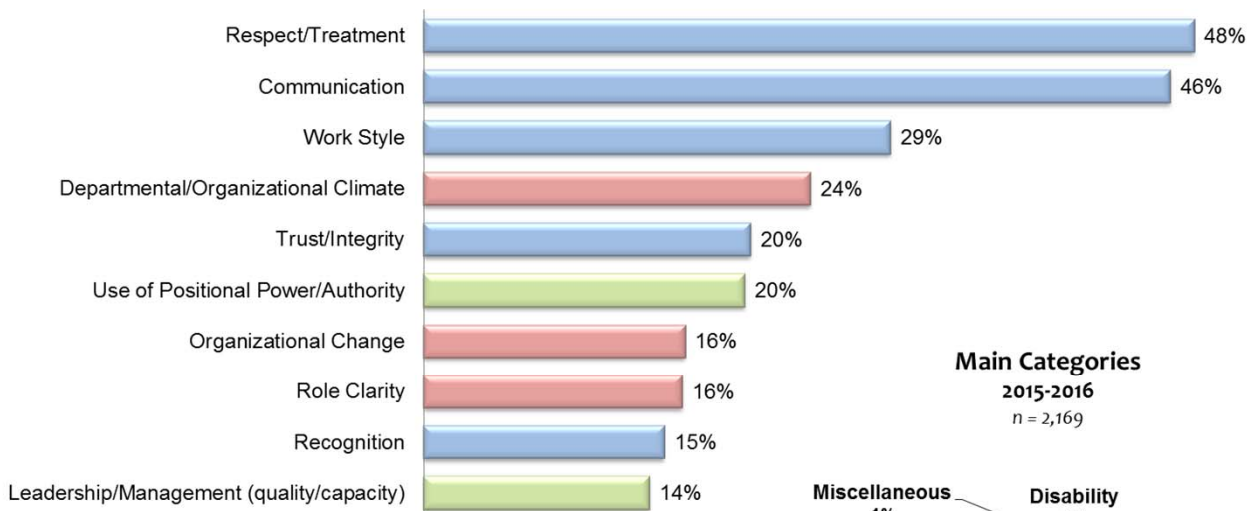
To understand the themes which bring UCSF visitors to the Ombuds, we adapted the IOA Uniform Reporting Categories to more precisely correspond to the issues and concerns discussed during intake. We code each visitor case to capture the concerns expressed by the visitor using 7 Main Categories and 54 Subcategory Issues. This coding allows us to review trends and themes across cases while maintaining visitor confidentiality. Most cases are described with multiple issues; our 541 Ombuds visitors expressed 2,169 issues collectively.

According to the data collected on 541 visitors in 2015-2016, the top 10 issues raised fell within the Categories: Interpersonal, Structural, and Misuse of Power.

Top 10 Subcategory Issues

2015-2016

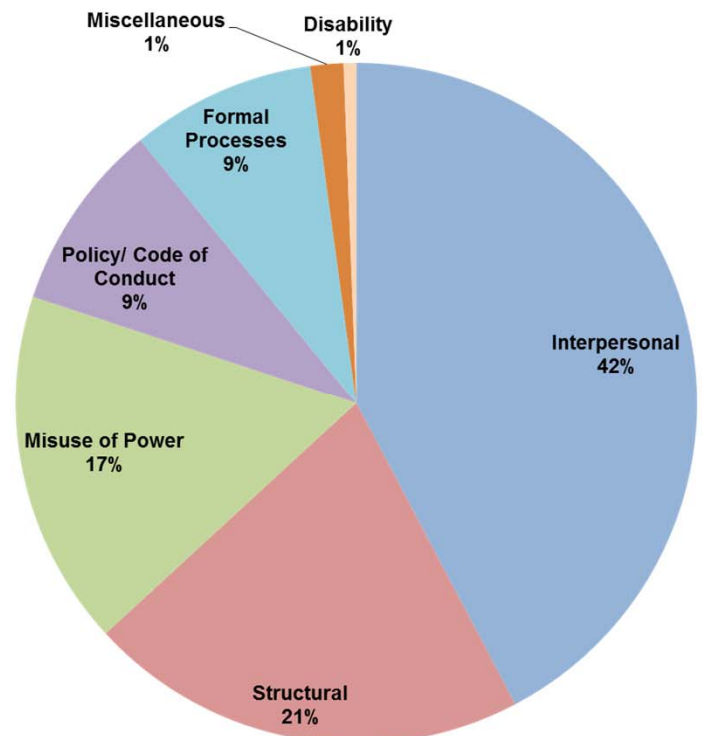
n = 541



Main Categories

2015-2016

n = 2,169



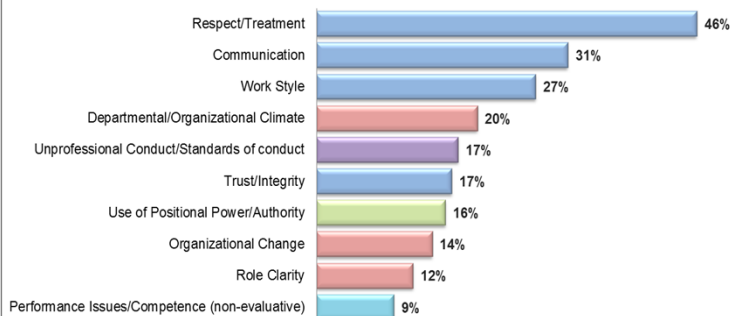
A visitor may name more than one issue during an Ombuds intake. The top 10 issues comprise 62% of total number of issues recorded.

Visitor Concerns (continued)

The Office uses the data in several ways. The data enables us to meet the charge of the Ombuds Office to identify and assess organizational trends and to present these trends to senior leadership and all of UCSF in the form of aggregated systemic feedback. Our understanding of the data is augmented by a more specific, nuanced experience of working on cases. While a case might be coded as “reputation”, our understanding of the specifics of the cases might help us see that there’s a trend of visitors’ future careers being threatened by poor references. Our weekly Ombuds case conference allows for a discussion of challenges, policies, and common situations which give us information to contextualize the data we code from visitor self-report. While the number of visitors we served (n=541) is small relative to the total population of faculty, students and employees at UCSF, we nevertheless offer the following snapshot:

Top 10 Issues and Concerns by Visitor Status 2015-2016

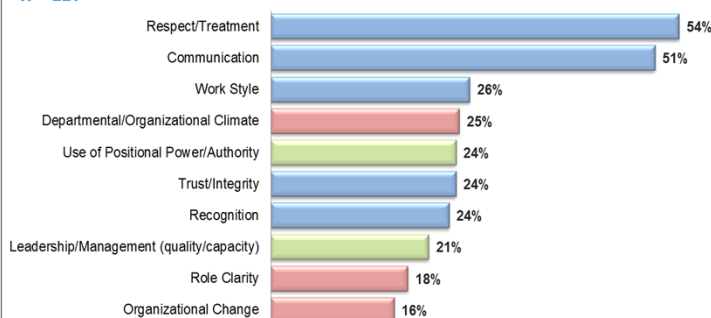
Faculty n = 127



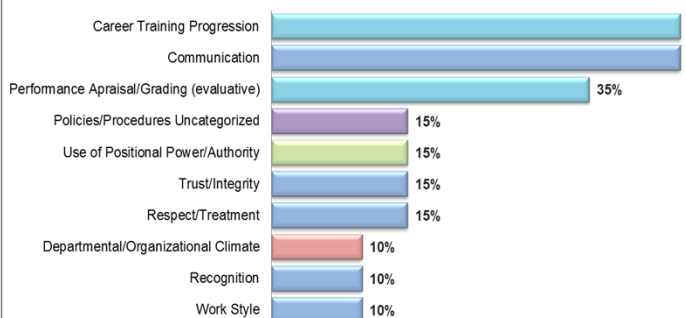
Managers & Supervisors n = 145



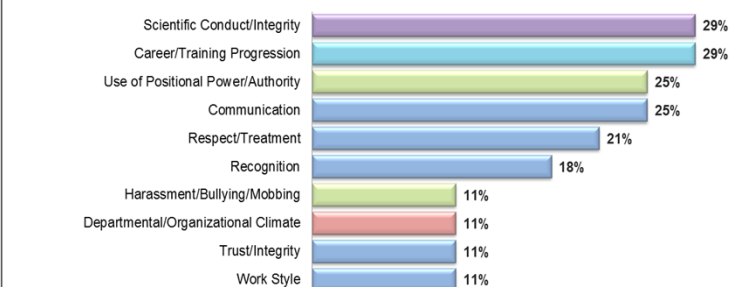
Staff n = 221



Students n = 20



Trainees/Other n = 28



Themes

Respect and treatment

Lack of respect and poor treatment, most often from a supervisor, less often from a peer, and occasionally by a subordinate employee ranked as the top subcategory of complaints coded by the Ombuds Office. This was followed by Communication and Work Style. We frequently hear the lack of respect as demonstrated by poor quality and/or quantity of communication and a work style that is directive, harsh, negative and/or punitive without accountability or consequences for disrespect and mistreatment.

Abrasive conduct

This theme, heard over the past three years, continues to be a persistent one. Taken together with departmental/organizational climate, trust/integrity and (mis)use of positional power and authority, these concerns suggest the existence of abrasive/bullying behavior, generally although not exclusively on the part of the manager or supervisor. Visitors express the concern that if they raise the issue they will experience some form of retaliation, and those who have raised the issue sometimes report negative consequences.

People frequently go on to say that the organizational climate is marked by poor morale or that the organization allows this behavior to go unchecked, especially among those who wield power. If the abrasive conduct occurs in this type of climate, individuals often express skepticism that anything will be done unless they file a formal complaint, which has its own risks for the individual.

As an academic health center, UCSF represents two of the three types of institutions that most often demonstrate higher levels of bullying behavior: health care and education. (The third type of institution noted for higher levels of bullying is government.) (Gary Namie, *Bullying by Industry*, Workplace Bullying Institute, 2013.) Characterized by profound hierarchy, dependence on the ability to raise external funding, and power that extends beyond the institution (e.g. the value of a reference letter or power to negatively impact someone's national or global reputation in tight circles), healthcare and education both are cited as permissive or accepting of abrasive behavior. At UCSF, we repeatedly hear the expectation that those with more power (faculty over students, PIs over trainees, attendings over nurses) won't be held accountable for actions that are perceived as abrasive.

Two challenges go hand in hand: the prevalence of an abrasive power dynamic that seems protected from consequences and a disciplinary process where understanding and navigating the steps isn't clear. It would serve the University well to address the institutional norms where these behaviors exist.

"Research has found that education, government and healthcare are the three industries where bullying seems to really thrive...

If your organization has one or more of the following, then you probably have bullying:

1. Many employees who have worked there for a long time
2. Many employees who are very smart (e.g., doctors, professors, engineers, etc.)
3. A bureaucratic culture (e.g., lots of rules, regulations, policies and top down leadership)
4. Leaders who focus on the bottom line at the expense of customers and employees
5. Organizational change (e.g., downsizing, changing work teams, restructuring, etc.)

Of course, every organization in any industry has the possibility of bullying. But research has found that these five things are regularly predictors of bullying."

- Catherine Mattice, MA, SPHR
CivilityPartners.com

Staff and academic personnel processes and procedures

Grievance and disciplinary procedures are protracted and lack clarity regarding steps and timelines for the process. The visitors to our office report that their ability to access clarifying information is often met with what is perceived as a resistant, negative or less-than-neutral response that feels highly adversarial. For those who are respondents in complaint procedures or those who are undergoing a disciplinary process, some report a lack of meaningful due process. For example, evidence collected by the investigator is not provided to the respondent, thereby not giving the respondent an opportunity to respond or ask questions. Complainants and respondents have expressed fear that if they ask questions, they will be perceived as aggressive and therefore refrain from pursuing their rights to due process.

Perceived or actual discrimination

Visitors across all status groups – faculty, staff, students and trainees – report negative experiences at UCSF pertaining to their race, gender or culture, and in the case of older employees, age. We frequently hear about the disconnect between UCSF’s stated value for diversity and how interactions play out on a daily basis. Although generally not overt, the discrimination is felt as repeated micro- aggressions and exclusionary treatment in ways that individuals perceive as barriers to their academic or career progression.

Institutional change

“Doing more with less” is frequently quoted by visitors to the office with further explanation of an unreasonable workload in the context of organizational change. On a positive note, many visitors express pride and commitment to the mission of UCSF which keeps them going, but at great sacrifice to their physical and emotional well-being. It seems that the value placed on productivity and accomplishment is experienced as highly stressful without the appropriate level of infrastructure to support satisfactory or better performance in the context of ongoing organizational change.

“ It was a pleasure to work with you. Everyone here, to a person, really enjoyed talking to you and I think felt very good about the process. I wish we had you to mediate all of our tough processes going forward. ”

- Staff member

“ Thank you so much for your graciousness, for making time during a busy period to meet, for your responsiveness, and, to top it all off, for your professional, expert, and caring facilitation of the meeting with the student and several faculty. We managed, I think, to make some positive steps – and this would NOT have been possible without your gentle guidance and holding us all to task.”

- Faculty member



Associated Risks and Potential Cost of Conflict

Conflict competence and informal conflict resolution services are valuable not only for the goal of humanizing the workplace but also to improve collaboration, innovation, productivity, and teamwork. Unresolved conflict creates both risk and cost. The 2008 CPP Global Human Capital Report states, “If managed improperly, businesses’ productivity, operational effectiveness, and morale take a major hit, as evidenced in our finding that 27 percent of employees have witnessed conflict morph into personal attack, while 25 percent say that the avoidance of conflict resulted in sickness or absence from work.” (*Workplace Conflict And How Businesses Can Harness It To Thrive*, CPP Global Human Capital Report, July 2008).

Risks include reduced work performance, personnel turnover, grievance and litigation possibilities, and safety issues, including both employee and patient safety. These risks have associated financial costs which can be estimated.

The Office of the Ombuds identifies the risks that visitors expressly state in their confidential meetings with us. In 2015-16, 245 of the 541 (45%) visitors identified at least one associated risk, and some visitors identified more than one risk. The risk categories are:

1. Loss of department productivity due to pervasive conflict (N=133)
2. Negative publicity (N=83)
3. Potential for internal/external grievances (N=61)
4. Litigation potential (N=30)
5. Unwarranted staff attrition/transfer (N=28)
6. Significant violations of policy/Code of Conduct (N=24)
7. High risk safety issue (N=13)

Loss of departmental productivity due to pervasive conflict was the top risk category identified by 133 individuals (54%) of the 245 visitors who cited a risk. Departmental productivity can be affected by absenteeism (sick time or stress leave), distraction from work, and management time spent addressing conflict. One study found that employees who take time off due to stress, anxiety or work conflict will be off the job for about 21 days (Zeynep Ilgaz, *Conflict Resolution: When Should Leaders Step In?*, a Forbes Contributor, Forbes Magazine, May 15, 2014). Another study found that, on average, an employee spends 2.1 hours every week dealing with conflict (CPP Global Human Capital Report, July 2008).

Examples of potential costs based on our data include the following:

For a UCSF Analyst (7234, Grade 1 mid-point) annual salary of \$69,000, this translates to a *potential cost* of \$634,040, based on 58 staff members and 35 managers who cited this risk.

For faculty members, the unadjusted median salary for Associate Professor is \$190,000. Based on 8% of the median salary, costs could total \$486,400, as cited by 32 faculty members.

Staff turnover is also an expensive result of unresolved conflict. In a 2012 study by the Center for American Progress, the cost of losing an employee can cost anywhere from 16% of their salary for hourly, unsalaried employees, to 213% of the salary for a highly trained position.



Associated Risks and Potential Cost of Conflict (continued)

Turnover costs include costs of interviewing, hiring, training, reduced productivity, cultural or morale impact, reduced engagement, and errors (Heather Boushey and Sarah Jane Glynn, *There Are Significant Business Costs to Replacing Employees*, Center for American Progress, November 16, 2012.)

Of the 28 visitors who spoke about **unwarranted staff attrition/ transfer**, 14 were faculty members, 3 were managers/supervisors, and 8 were staff. For examples of potential costs to UCSF to replace employees, please see Appendix II.

Litigation is another expensive cost of unresolved conflict. The median judgment for an employment lawsuit is approximately \$200,000, in addition to defense costs. About 25% of cases result in a judgment of \$500,000 or more (*Employee Charge Trends Across The United States*, The 2015 Hiscox Guide to Employee Lawsuits, Hiscox Inc., 10/15). Thirty Ombuds visitors (10 faculty members, 8 managers/supervisors, 8 staff members, 1 student and 3 trainees) identified litigation as something they might consider.

For UCSF, it's not just money – patient-centered outcomes may also be at stake. The blog of *The Joint Commission Journal on Quality and Patient Safety* reported on Managing Conflict Within Health Care Organizations as a Patient Safety Imperative, saying:

Whether conflicts openly threaten a major disruption of hospital operations or whether unresolved conflicts lurk beneath the surface of daily interactions, unaddressed conflict can undermine a hospital's efforts to ensure safe, high-quality patient care.

(Scott, Charity and Gerardi, Debra, *A Strategic Approach for Managing Conflict in Hospitals: Responding to the Joint Commission Leadership Standard, Part 1* (2011). *Joint Commission Journal on Quality and Patient Safety*, Vol. 37, No. 2, 2011)

While some conflicts at UCSF warrant a formal investigation or adjudication, many others can be resolved through informal and less adversarial means. The Ombuds Office works to improve the experience of working and learning at UCSF, one individual at a time, and mitigates risk to the institution in not only a cost-effective manner, but also in a humane manner through consultation, coaching, mediation, facilitation and trainings. The Ombuds Office is grounded in conflict resolution principles and works with visitors to address conflict constructively, identify root causes and prevent conflict escalation. We avoid significant risks and costs of unresolved conflict to the individual and to the institution.

“When organizations develop positive, virtuous cultures they achieve significantly higher levels of organizational effectiveness – including financial performance, customer satisfaction, productivity, and employee engagement.”

- Emma Seppala and Kim Cameron, *Proof That Positive Work Cultures Are More Productive*, Harvard Business Review, December 1, 2015

<https://hbr.org/2015/12/proof-that-positive-work-cultures-are-more-productive>



Discussion and Recommendations

UCSF is a large, complex, dynamic and decentralized institution with multiple points of entry to address complaints. Our priority is to help those individuals, dyads and teams who seek our services work through conflict in a functional way. Our orientation is generally proactive and often educational so we hope that we offer longer-term opportunities for change beyond the presenting circumstances.

However, these conflict experiences arise in the context of the organization that either supports or precludes productive conflict management. UCSF has a firm commitment to maintaining a respectful, ethical, productive environment for working and learning through our PRIDE Values, our Principles of Community and our commitment to diversity and inclusion. Yet we see from our visitors that these principles and values aren't universally practiced. Reports of concerns based on respect/ treatment, communication, trust, and use of positional power were common. Visitors spoke of the "untouchability" of faculty or senior managers whose abrasive or egregious behavior is overlooked due to their rank and status and their ability to attract funding. Our institution is not unlike other academic and health care institutions in this respect, where abrasive behavior appears to be accommodated.

UCSF is also an institution that regularly goes through big changes, from Operational Excellence to the opening/re-opening of three new hospitals in the last two years. Changing processes, locations, patient profiles and staffing all have the potential to increase employee stress, resulting in increased conflict, which contributes to negative health consequences and expensive decreases in productivity. Our visitors speak about departmental and organizational climate challenges that often result from increased workload, high staff turnover, and inadequate management support.

With a campus-wide increase in education and outreach on issues of sexual harassment and discrimination, investigative processes have been impacted, resulting in reported delays and miscommunication. More broadly, visitors to the Office of the Ombuds report being unclear about both disciplinary and investigatory processes for work performance or conduct. Visitors report extended delays, causing departments to be short-staffed, employees out on long investigatory leaves, and complex issues being addressed in processes that lack transparency for participants. This leads many to question whether employee rights to due process are lacking. The longer the process, the return or replacement of the employee under investigation becomes more challenging, and it becomes more difficult for the group to return to productive work.

The Office of the Ombuds recommends the following to address the challenges in our University environment:

1. Leadership take a "no tolerance" stand on disrespect/incivility in the workplace and classroom. Recently, UC President Janet Napolitano issued a Guidance from the President Regarding Staff Abusive Conduct and Bullying, citing the Principles of Community and Regents Policy 1111. At UCSF, leaders have addressed these issues in the most recent Newsletter by Executive Vice Chancellor and Provost Dan Lowenstein and a letter to the campus community from Vice Chancellor Renee Navarro and HR Director David Odato. Continuing these messages and integrating discussions of workplace civility and standards is the first step toward setting expectations for the climate we all desire.



Discussion and Recommendations (continued)

2. Expand current training on addressing abrasive conduct and bullying, including a focus on bystander behavior. Setting new norms requires the development of new skills. Department Chairs, faculty members, and senior administrators can lead in establishing norms of conflict competence and workplace civility.
3. Improve strategies for all faculty, managers, supervisors, and leaders to receive regular meaningful feedback and for others to provide feedback without the threat of retaliation.
4. Support accountability for abrasive conduct through a well-staffed, efficient, transparent process for addressing allegations of abrasive behavior/hostile work environment.
5. Develop a central location/website for outlining the various grievance processes for how and where to file a complaint, what to expect and who is available as a resource to contact.
6. Implement a Workplace Bullying Prevention policy to specifically address abrasive/bullying behavior.

While we recognize the extraordinary work being done at UCSF, a commitment to name and address the challenges can help us all live the PRIDE Principles that we espouse and that support our mission of excellence in patient care, education, and research.

“As leaders, it is our responsibility to be courageous and create change in the workplace. We have to examine, and even overhaul, our organizational policies, strategies, cultures and values to ensure that employees can maximize their potential in and out of the workplace.”

- *Women In America: Work and Life Well-Lived*, Gallup Report, Gallup, Inc., 2016

<http://www.gallup.com/reports/195359/women-america-work-life-lived-insights-business-leaders.aspx>



University of California, San Francisco Office of the Ombuds Charter Agreement

I. Introduction

The Office of the Ombuds at the University of California, San Francisco was established in 2011 to provide confidential, neutral, informal, and independent dispute resolution and mediation services to members of the UCSF community, predicated on the principles of fairness, equity, and respect. The structure and practice of the office is built on independence, impartiality and confidentiality. In the spirit of these important functions, this Charter Agreement defines the privileges and responsibilities of the Office of the Ombuds.

II. Purpose & Scope of Services

The Office of the Ombuds provides confidential, impartial, independent and informal dispute resolution and mediation services. The office is available to all members of the UCSF community, including faculty, staff, students, post-doctoral fellows and other trainees who seek assistance with matters brought to the attention of the Ombuds. Participation for any party is on a voluntary basis.

The Office of the Ombuds receives complaints, concerns or inquiries about alleged acts, omissions, improprieties, and/or broader systemic problems within the Office's defined jurisdiction. These are received in confidence as defined in section IV. B. of this document. In response, the Office of the Ombuds will listen, review matters received, make informal inquiries, offer options, make referrals, and facilitate resolutions independently and impartially. In addition, the Office of the Ombuds shall serve as an information and communication resource, consultant, dispute resolution expert and catalyst for institutional change.

The Office of the Ombuds supplements but does not replace or substitute for formal, investigative or appeals processes made available by the University. Use of the services of the Ombuds office does not delay filing requirements associated with the University's complaint and/or grievance procedures.

The Office of the Ombuds functions to assist parties in reaching mutually acceptable agreements in order to find fair and equitable resolutions to concerns that arise at the university. Use of the office is voluntary. The Office of the Ombuds also reports general trends of issues and provides feedback throughout the organization, and recommends systems change when appropriate, without disclosing confidential communications.

III. Reporting

The Office of the Ombuds functions independently with respect to case handling and issue management. For administrative and budgetary purposes only, it reports to the Vice Provost of Academic Affairs. To fulfill its functions, the Office of the Ombuds shall have a specific allocated budget, adequate space, and sufficient resources to meet operating needs and pursue continuing professional development.

IV. Standards & Ethics

The Office of the Ombuds staff shall adhere to The International Ombudsman Association (IOA) Code of Ethics and Standards of Practice which may be found on its website at ombuds.ucsf.edu. This Charter adopts and incorporates by reference the IOA Standards of Practice, IOA Code of Ethics, and IOA Best Practices. These tenets require the Office of the Ombuds to function independently of the organization, to be confidential and neutral, and to limit the scope of its services to informal means of dispute resolution. The IOA Standards, Code, and Best Practices delineate minimum standards, and the Office of the Ombuds shall always strive to operate to “best practices”¹ and to serve the best interests of all concerned. The Office of the Ombuds also adheres to best practices within the University of California system, as delineated in the “Declaration of Best Practices for University of California Ombuds Offices”.

A. Independence

Independence is essential to the effective functioning of the Office of the Ombuds. The Office of the Ombuds shall be, and shall appear to be, free from interference in the legitimate performance of its duties. This independence is achieved primarily through reporting structure, neutrality and organizational recognition and respect for the independent role of the Office of the Ombuds. To ensure objectivity, the Office of the Ombuds shall function independently from administrative authorities. This includes not disclosing confidential information about matters discussed in the Office of the Ombuds with anyone in the organization, including the person to whom the Office of the Ombuds reports, except as clearly delineated in Section IV. B. In addition, the Office of the Ombuds will have the authority to manage the budget and operations of the office.

B. Confidentiality

The Office of the Ombuds shall not disclose any information provided in confidence, unless in the course of discussions with an inquirer, the Ombuds asks for and receives permission to make a disclosure or unless the Ombuds determines that there is an imminent risk of serious harm. The Office of the Ombuds asserts that there is a privilege of confidentiality with respect to the identity of visitors and their issues, and therefore cannot be required to disclose confidential communications². The Office of the Ombuds shall not confirm communicating with any party or parties. The Office of the Ombuds shall neither willingly participate as witnesses with respect to any confidential communication, nor participate in any formal process inside or outside the University.

¹ “Best practices” are defined as operating in accordance with the guidelines and definitions contained within this document, IOA Standards of Practice, IOA Code of Ethics, IOA Best Practices: A Supplement to IOA’s Standards of Practice – Version 2, IOA Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operation of Ombuds Offices, and Declaration of Best Practices for University of California Ombuds Offices.

² As stated in the Declaration of Best Practices of University of California Ombuds Offices, “In accordance with the California Mediation Act (California Evidence Code Section 1115-1128), UC Ombuds are neutrals who meet the definition of mediators and whose communications with visitors are for the purpose of initiating, considering, or reconvening a mediation or retaining the ombuds, and thus assert the mediator’s privilege for all communications with visitors. Additionally, UC Ombuds assert that all communications with their offices are made with the expectation of confidentiality and are therefore entitled to a protection under the California State Constitution. By providing visitors with a confidential reporting mechanism, Ombuds Offices also assist the University in meeting the important public objectives set forth in the Federal Sentencing Guidelines and the Sarbanes-Oxley Act.” The UCSF Office of the Ombuds will assert any and all legal privileges related to confidential communications made with the office.

C. Impartiality

The Office of the Ombuds shall not take sides in any conflict, dispute or issue. The Office of the Ombuds shall consider the interests and concerns of all parties involved in a situation impartially with the aim of facilitating communication and assisting the parties in reaching mutually acceptable agreements that are fair and equitable, and consistent with the policies of the University.

D. Informality

The Office of the Ombuds shall be a resource for informal dispute resolution and mediation services. The Office of the Ombuds shall not investigate, arbitrate, adjudicate or in any other way participate in any internal or external formal process or action. The Office of the Ombuds does not keep records for the University, and shall not create or maintain documents or records for the University about individual cases. Use of the Office of the Ombuds will be voluntary and not a required step in any grievance, formal complaint process or University policy.

V. Authority and Limits of the Office of the Ombuds

A. Authority of the Office of the Ombuds

The Office of the Ombuds shall be entitled to inquire about any issue concerning the University which affects any member of the University community, and shall respect the confidentiality of that information. The Office of the Ombuds may informally address issues which fall under federal, state, local labor and employment laws, rules and regulations. The Office of the Ombuds shall have appropriate access to records and personnel at UCSF for the purpose of facilitating informal resolutions. The Office of the Ombuds has the authority to break confidence if the Ombuds believes there is an imminent risk of serious harm.

The Office of the Ombuds may, without having received a specific complaint from a member of the University community, act on its own discretion, and initiate inquiries concerning matters the Office of the Ombuds believe warrant such treatment. The Office of the Ombuds may decline to inquire into a matter or may withdraw from a case if the Ombuds believes involvement is inappropriate for any reason, including matters not brought in good faith, or which appear to be misuses of the Ombuds function. In situations such as this, the Ombuds will directly communicate their intent to the visitor and refer them to other options which may be available.

The Office of the Ombuds has the authority to discuss a range of options available to the visitor, including both informal and formal processes. However, the Office of the Ombuds will have no actual authority to impose sanctions, remedies or to enforce or change any policy, rule or procedure. The Office of the Ombuds may require legal or other professional advice, from time to time, in order to fulfill their required functions. The Office of the Ombuds may be provided separate legal counsel in the event it is asked for documents or testimony related to any litigation or other formal process, or when a conflict of interest arises between the Office of the Ombuds and the administration or the University.

B. Limitations on the Authority of the Office of the Ombuds

1. Receiving Notice for the University

Communication to the Office of the Ombuds shall not constitute notice to the University. The Office of the Ombuds shall publicize its non-notice role to the University. This includes allegations that may be perceived to be violations of laws, regulations or policies, such as sexual harassment, issues covered by the Whistleblower policy, or incidents subject to reporting under the Clery Act. Because the Ombuds does not function as part of the administration of the University nor as a “Campus security authority” as defined in the Clery Act, even if the Ombuds becomes aware of such allegations, the Ombuds is not required to report it to the University or to law enforcement.

If a user of the Office of the Ombuds would like to put the University on notice regarding a specific situation, or wishes for information to be provided to the University, the Ombuds will provide that person with information so that the person may put the University on notice.

2. Collective Bargaining Agreements

The Office of the Ombuds shall not address any issues arising under any collective bargaining agreement (“CBA”), unless allowed by specific language in the CBA. This means that while the Office of the Ombuds may provide services to exclusively represented (i.e. unionized) employees, those services may not include addressing issues that are covered in the CBA, including, but not limited to, issues such as disciplinary or non-disciplinary performance management, dismissal or any other alleged violation of a CBA or University policy. In those cases, the Ombuds shall refer the employee to his or her union representative. The Office of the Ombuds may work with exclusively represented (i.e. unionized) employees regarding all other issues not covered by the contracts, such as communication issues, facilitating discussions, and improving teamwork with various other employees.

3. Formal Processes and Investigations

The Office of the Ombuds shall not conduct formal investigations of any kind. The Office of the Ombuds staff shall not willingly participate in formal dispute processes or outside agency complaints or lawsuits, either on behalf of a user of the Office of the Ombuds or on behalf of the University. The Office of the Ombuds provides an alternative to formal processes for dispute resolution. All use of Ombuds services shall be voluntary and shall not impact filing requirements within the University or outside agencies. Because confidentiality, neutrality and informality are critically important to the Office of the Ombuds, all communications with the office are made with the understanding that they are confidential, off-the-record, and that no one from the office will be called to testify as a witness in any formal or legal proceeding to reveal confidential communications.

4. Record Keeping

The Office of the Ombuds does not keep records for the University, and shall not create or maintain documents or records for the University about individual cases. Notes, if any, taken during the course of working on a case are routinely destroyed at regular intervals and at the conclusion of a matter. All materials related to a case will be maintained in a secure location and manner, and will be destroyed once the case is concluded. The Ombuds may maintain non-confidential statistical data to assist the Ombuds in reporting trends and giving feedback to the University community.

5. Advocacy & Psychological Counseling

The Office of the Ombuds shall not act as an advocate for any party in a dispute, nor shall they represent management or visitors to their office. In addition, the Office of the Ombuds does not provide legal or psychological assistance, but can provide referral to the appropriate resources if necessary.

6. Adjudication of Issues

The Office of the Ombuds shall not have authority to adjudicate, impose remedies or sanctions, or to enforce or change policies or rules.

7. Conflict of Interest

Individual Ombuds shall avoid involvement in cases where there may be a conflict of interest. A conflict of interest occurs when the Ombuds' private interests, real or perceived, supersede or compete with his or her dedication to the impartial and independent nature of the role of the Ombuds. When a real or perceived conflict exists, the Ombuds should take all steps necessary to disclose and/or avoid the conflict.

VI. Retaliation for Using the Office of the Ombuds

All members of the constituencies served by the Office of the Ombuds shall have the right to consult the Office of the Ombuds without fear of retaliation or reprisal.

VII. Office of the Ombuds Structure

All involvement and functions operate within the parameters and guidelines set forth in this charter and IOA principles. The Office of the Ombuds reports to the Office of the Vice Provost, Academic Affairs for administrative and budgetary purposes only.

References:

- IOA Standards of Practice
<http://www.ombudsassociation.org/About-Us/IOA-Standards-of-Practice-IOA-Best-Practices.aspx> *English, French, and Spanish versions.*
- IOA Code of Ethics
<http://www.ombudsassociation.org/About-Us/IOA-Standards-of-Practice-IOA-Best-Practices/Code-of-Ethics.aspx> *English, French, and Spanish versions.*
- IOA Best Practices: A Supplement to IOA's Standards of Practice – Version 2, March 31, 2008
- IOA Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operation of Ombuds Offices, revised February 2004; March 14, 2006
- Declaration of Best Practices for University of California Ombuds Offices
<http://ombuds.ucsf.edu/pdf/BestPracticesDeclarationUC.pdf>

UCSF Office of the Ombuds October 2016

VALUE OF THE OFFICE OF THE OMBUDS

- Office of the Ombuds received 541 visitors in 2015-2016 and provided consultation, coaching, referral and/or mediation services.
- 372 Risks were associated in two hundred and forty-five cases.
- The Office of the Ombuds trained 1,522 people in 2015-2016 in skills-building workshops for conflict management.

FACTS AND FIGURES

- There are a variety of turnover costs, but they can be broken down into two main categories – direct and indirect, which vary depending on the specifics of the job. The cost of replacing an employee can range anywhere from 16% to 213% of their salary. (Heather Boushey and Sara Jane Glynn, *There are Significant Business Costs to Replacing Employees*, Center for American Progress, November 16, 2012)
- Health care expenditures at high-pressure companies are nearly 50% greater than at other organizations. Sixty percent to 80% of workplace accidents are attributed to stress and it's estimated that more than 80% of doctor visits are due to stress. A large-scale study conducted by Anna Nyberg at the Karolinska Institute showed a strong link between leadership behavior and heart disease in employees. (Emma Seppala and Kim Cameron, *Proof That Positive Work Cultures Are More Productive*, Harvard Business Review, December 1, 2015)
- In fiscal year 2015, The Equal Employment Opportunity Commission Office of General Counsel reported an average of \$415,924 per claim – resolved a total of 157 merits lawsuits, recovering \$65,300,000 in monetary relief.
- Indirect costs and effects of absenteeism include: poor quality of goods/services, reduced productivity, excess manager time (dealing with discipline and finding suitable employee replacements), safety issues (inadequately trained employees filling in for others, rushing to catch up after arriving as a replacement, etc.), poor morale among employees who have to “fill in” or do extra work to cover absent coworkers. (*The Causes and Costs of Absenteeism In the Workplace*, Instopedia, a Forbes contributor, Forbes Magazine, July 10, 2013)
- A survey found that, on average, an employee spends 2.1 hours every week – approximately *one day a month* – dealing with conflict in some way (being involved in a disagreement, managing a conflict between co-workers, etc.) (*Workplace Conflict And How Businesses Can Harness It To Thrive*, CPP Global Human Capital Report, July 2008)
- Underlying mental ill-health sickness absences are problems with interpersonal relationships: and underlying that is bullying and harassment, and difficult bosses. Data from The Health and Occupation Research network shows that over a period of 6 years: 24% of mental ill-health sickness absence relates to interpersonal relationships and bullying. These two categories are more likely on average to have staff off for longer periods of time – 26 days or more than a working month. (Katherine Graham, *Bullying and Harassment – Evidence it Accounts for Sickness and Absence*, Mediate.com, October 2014)

Risk	Total Cases	Potential Cost	Operating Assumptions	Associated Categories Possibly Increasing Cost	Notes
1 Loss of dept. productivity due to pervasive conflict	133	\$734,160	<ul style="list-style-type: none"> UCSF Title and Pay Plan for PSS, Analyst 7234, Grade 1 (mid-level) annual salary \$69,000 Absenteeism rate of 21 days (8%)¹ 	Unwarranted staff attrition; potential for grievances; impact on other personnel within the unit	Calculation is based on staff salary. Potential cost increases would be associated with a manager or faculty.
2 Potential for internal/ external grievances	61	\$1,709,525 (@ 25%)	<ul style="list-style-type: none"> UCSF Title and Pay Plan for PSS, Manager 0280, Tier 2, Grade 1 (mid-level), annual salary \$112,100 25-40% time dealing with workplace conflict² 	Loss of productivity; staff attrition and transfer; negative publicity litigation potential	Could involve additional managerial/ MSP staff, thereby incurring additional costs.
3 Unwarranted staff attrition/transfer	28	\$2,898,000	<ul style="list-style-type: none"> UCSF Title and Pay Plan for PSS, Analyst 7234, Grade 1 (mid-level) annual salary \$69,000 Standard cost 150% of employee's salary³ 	Loss of productivity	The cost of employee turnover can have a potential cost of up to 213% of the salary for a highly trained position.
4 Significant violations of policy/Code of Conduct	24	\$672,600 (@ 25%)	<ul style="list-style-type: none"> Involvement of at least one managerial staff UCSF Title and Pay Plan for PSS, Manager 0280, Tier 2, Grade 1 (mid-level), annual salary \$112,100 25-40% time dealing with workplace conflict 	Potential for grievance; litigation potential; Negative publicity; Unwarranted staff attrition and transfer	Additional cost could also be determined by the amount of time involving investigatory staff, HR staff, and MSP level staff.
5 Negative publicity	83	Unknown	-----	Loss of productivity; staff attrition/transfer	An amount has not been calculated for this risk. However, could have negative impact on reputation, credibility, recruitment, customer confidence – ultimately resulting in
6 Litigation potential	30	\$6,000,000	<ul style="list-style-type: none"> Conservative average cost of an employment litigation claim \$200,000⁴ 	Loss of productivity; staff attrition/transfer; negative publicity	Associated cost could be as high as \$415,924 per claim (based on the figure reported as the average cost for an EEOC claim) ⁵
7 High risk safety issue	13	\$968,721	<ul style="list-style-type: none"> \$74,517 per workers' comp claim⁶ 	Productivity loss; litigation potential; negative publicity; significant violations of policy/Code of Conduct; staff attrition/transfer; grievances	Costs could increase for: medical or psychological care, temp/perm disability pay; retraining or skills enhancement training; death benefits; disability discrimination, etc. Safety issues include both employee safety and patient safety.

¹ Workers who take time off because of stress, anxiety, or a work conflict will be off the job for about 21 days. (Zeynep Ilgaz, *Conflict Resolution: When Should Leaders Step In?*, Forbes Magazine, May 15, 2014).

² The typical manager spends 25-40% of their time dealing with workplace conflicts (Zeynep Ilgaz, *Conflict Resolution: When Should Leaders Step In?*, Forbes Magazine, May 15, 2014).

³ Replacing an employee will cost 150-200% more than that employee's salary and benefits. (Jennifer Lawler, *The Real Cost of Workplace Conflict*, Entrepreneur Magazine, June 21, 2010).

⁴ The median judgment for an employment lawsuit is approximately \$200,000, which is in addition to defense costs. About 25% of cases result in a judgment of \$500,000 or more. (*Employee Charge Trends Across the United States*, The 2015 Hiscox Guide to Employee Lawsuits, Hiscox, Inc., 10/15).

⁵ In fiscal year 2015, The Equal Opportunity Commission Office of General Counsel reported an average of \$415,924 per claim - resolved a total of 157 merits lawsuits, recovering \$65,300,000 in monetary relief.

⁶ In 2015, the average cost of a workers' compensation indemnity claim was \$74,517/claim. (*Workers' Compensation Action Network based on 2016 Workers' Compensation Insurance Bureau of California Report*).