

Workplace Harassment Policy of the General Assembly

Effective DRAFT

A. APPLICABILITY

This Policy applies to every member of the General Assembly, every legislative employee who is not subject to the state personnel system, and third parties.

B. SCOPE

This Policy prohibits workplace harassment based on any legally protected status in employment, sometimes referred to as a "protected class." Protected status or class includes: (1) an individual's race, creed, color, religion, national origin, sex (including pregnancy, childbirth, and related medical conditions), ancestry, sexual orientation, age forty and older, disability status, marital status, genetic information, gender identity or expression, active military personnel status, citizenship status, or transgender status; (2) any other class, attribute, or affiliation that is protected by state, federal, or applicable local law; or (3) an individual's association with others in a protected class. Concerns that fall outside of the scope of this Policy may fall under the General Assembly's Workplace Expectations policy.

C. WORKPLACE HARASSMENT PROHIBITED

The General Assembly prohibits harassment, including sexual harassment, by members, legislative employees, and third parties and will take prompt and appropriate action in response to complaints of prohibited harassment.

D. RETALIATION PROHIBITED

1. The General Assembly prohibits retaliation against an individual for having complained filing a complaint about an alleged violation of this Policy, ~~assisted~~ assisting in such a complaint, or ~~participated~~ participating in an investigation into such a complaint.
2. Retaliation is a serious problem, and a fear of retaliation prevents issues from surfacing, keeps individuals from raising problems, and enables a culture of fear and disrespect. The General Assembly recognizes the seriousness of retaliation and is committed to responding to and addressing retaliation concerns proactively and reactively upon receiving a complaint of retaliation. Retaliation, regardless of the merits of the underlying complaint that led to retaliation, violates this Policy.

E. DEFINITIONS

As used in this Policy:

Commented [CC1]: Changes to this provision are for consistency with the list in Joint Rule 38 and in §24-34-402, C.R.S.

Note that the list in §24-34-402 does not include citizenship status, active military personnel status, genetic information, and transgender status, but those are all included in the current policy. Technically, transgender status is covered under "gender identity or expression". Also note that "genetic information" is covered under federal anti-discrimination law.

Commented [CC2]: Modifying retaliation definition to ensure an actual complaint has been filed. Other changes to this provision are technical and for consistency in the verb form – filing, assisting, or participating.

1. **Chamber leadership** means:

- a. ~~F~~For the House of Representatives, ~~means~~ the Speaker and Majority and Minority Leaders of the House of Representatives; and;
- ~~1.b.~~~~F~~For the Senate, ~~means~~ the President and Majority and Minority Leaders of the Senate.

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- 2. **Committee** means the Workplace Harassment Committee established in each chamber, pursuant to Senate Rule 21 and House Rule 25.
- 3. **Complainant** means an individual who files a complaint, whether formal or informal, under this Policy.

4. **Harassment (or to Harass)** means to engage in, or the act of engaging in, any unwelcome physical or verbal conduct or any written, pictorial, or visual communication (including through the use of social media) directed at an individual or group of individuals because of that individual's or group's membership in, or perceived membership in, a protected class, which conduct or communication is subjectively offensive to the individual alleging harassment and is objectively offensive to a reasonable individual who is a member of the same protected class.

Commented [CC4]: The new definition of harassment is based on SB23-172

Commented [CC5]: Earlier versions of the proposed policy changes made specific reference to social media, but SB23-172 does not include that reference, so we recommend deleting the reference here.

a. The conduct or communication need not be severe or pervasive to constitute a violation of this Policy and is a violation of this Policy if:

- i. Submission to the conduct or communication is explicitly or implicitly made a term or condition of the individual's employment;
- ii. Submission to, objection to, or rejection of the conduct or communication is used as a basis for employment decisions affecting the individual; or
- iii. The conduct or communication has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

b. The nature of the work or the frequency with which harassment in the workplace occurred in the past is not relevant to whether the conduct or communication is a violation of this Policy.

c. Notwithstanding this definition, petty slights, minor annoyances, and lack of good manners do not constitute harassment unless the slights, annoyances, or lack of manners, when taken individually or in combination and under the totality of the circumstances, meet the standards set forth in this Policy. Factors to consider under the totality of the circumstances include:

- i. The frequency of the conduct or communication, recognizing that a single incident may rise to the level of harassment;
 - ii. The number of individuals engaged in the conduct or communication;
 - iii. The type or nature of the conduct or communication, recognizing that conduct or communication that, at one time, was or is welcome between two or more individuals may become unwelcome to one or more of those individuals;
 - iv. The duration of the conduct or communication;
 - v. The location where the conduct or communication occurred;
 - vi. Whether the conduct or communication is threatening;
 - vii. Whether any power differential exists between the individual alleged to have engaged in harassment and the individual alleging the harassment;
 - viii. Any use of epithets, slurs, or other conduct or communication that is humiliating or degrading; and
 - ix. Whether the conduct or communication reflects stereotypes about an individual or group of individuals in a protected class.
4. ~~Harassment is conduct or action that demeans, stereotypes, or shows hostility or aversion toward an individual or group because of the individual's or group's protected class. Harassment is conduct directed toward an individual because the individual is a member of a protected class that:~~
- ~~a. Is reasonably perceived to be based on the individual's membership in the protected class; and~~
 - ~~b. Is severe or pervasive; and either:~~
 - ~~i. Has the purpose or effect of unreasonably interfering with an individual's work performance; or~~
 - ~~ii. Otherwise adversely affects an individual's employment opportunities.~~
- ~~a-d.~~ While harassment includes sexual harassment because it is behavior based on a person's sex, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment. As such, "sexual harassment" is defined separately in section E.14. of this Policy.
5. **Legislative employee** means an employee of the Legislative Council Staff, the Office of Legislative Legal Services, the Joint Budget Committee Staff, the Office of the State Auditor who is not subject to the state personnel system, the Senate, or the House of Representatives, including any legislative aide to a member, unpaid legislative intern, or volunteer staff member.
6. **Member** means a legislative member or member-elect of the General Assembly.

Commented [CC6]: The addition of "the" in 2 places is technical for consistency with the rest of the items in the series

7. **Nonpartisan staff** means an employee of the Legislative Council Staff, the Office of Legislative Legal Services, the Joint Budget Committee Staff, or the Office of the State Auditor who is not subject to the state personnel system, or an employee of the Senate or the House of Representatives who does not work for a specific member or caucus.

Commented [CC7]: Same as above – technical additions for consistency

8. **Nonpartisan supervisor** means:

- a. For nonpartisan employees-staff of the Senate, the Secretary of the Senate;
- b. ~~f~~For nonpartisan employees-staff of the House of Representatives, the Chief Clerk of the House of Representatives;
- c. ~~f~~For employees-nonpartisan staff of the Legislative Council Staff, the Director of the Legislative Council Staff;
- d. ~~f~~For employees-nonpartisan staff of the Office of Legislative Legal Services, the Director of the Office of Legislative Legal Services;
- e. ~~f~~For employees-nonpartisan staff of the Joint Budget Committee, the Director of the Joint Budget Committee Staff; and
- ~~s.f.~~ ~~f~~For employees-nonpartisan staff of the Office of the State Auditor, the State Auditor.

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Commented [CC8]: Technical changes to ensure the defined term "nonpartisan staff" is being used instead of the undefined term "employee"

9. **Office of Legislative Workplace Relations (Office)** means the office created in section 2-3-511, C.R.S., which that provides services to the legislative department related to employee relations, training, compliance, complaint resolution, and workplace culture.

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10. **Partisan staff** means a legislative employee of the Senate or House of Representatives who works for a specific member or caucus within the General Assembly.

11. **Party** means the complainant or the respondent, and "parties" means the complainant and the respondent.

12. **Respondent** means an individual who is accused of wrongdoing under this Policy.

13. **Retaliation** means a materially adverse action, such as an act of punishment, reprisal, or revenge, that is taken against an individual because the individual complains ~~offiled a~~ complaint alleging behavior prohibited under this Policy or assists or participates in the investigation of a complaint under this Policy. Retaliation also includes an action that is taken against an individual that would deter a reasonable person from coming forward to complain of misbehavior under this Policy or from assisting or participating in an investigation under this Policy. Retaliation can take many forms and can be work-related or not work-related.

Commented [CC10]: Consistent with the change to the description of "retaliation", above, this change will require that a claim of retaliation be based on an actual complaint having been filed. Other changes are technical for consistency with the first sentence, which references "assists or participates" in an investigation.

14. **Sexual harassment** means harassment that is sexual in nature. unwelcome sexual advances, requests for sexual favors, ~~and other verbal or physical conduct of a sexual nature when:~~

Commented [CC11]: This provision is mostly the same as the provision in the current policy. I have indicated specific changes below.

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- ~~i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;~~
- ~~ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or~~
- ~~iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.~~

~~b. The following are examples of conduct or communication that may constitute sexual harassment:~~

a. Verbal:

- i. Sexual comments or innuendo about one's clothing, body, or sexual activity;
- ii. Discussing sexual topics in the workplace, such as sexual practices or preferences or telling sexual jokes or stories;
- iii. Requesting or demanding sexual favors or suggesting that there is any connection between sexual behavior and any term or condition of employment, whether that connection is positive or negative; or
- iv. Using sexual words or phrases.

Commented [CC12]: Changed the word "be" to "is" – grammatical change

b. Nonverbal:

- i. Displaying sexually explicit pictures or objects in the work area;
- ii. Giving personal gifts of a sexual nature;
- iii. Making sexually suggestive gestures;
- iv. Making unwelcome visits to a member's, legislative employee's, or third party's home or lodging place; or
- v. Displaying a cartoon or sending an e-mail, text message, instant message, note, or any other message that contains sexual images, words, or phrases.

Commented [CC13]: Changed "hotel room" to "lodging place" to reflect various types of lodging that one may be using.

Commented [CC14]: All of these terms were in the plural form; we have changed them to singular.

Commented [CC15]: Added "any other message" to encompass other forms of communicating. (Ben's recommendation)

Commented [CC16]: Changed "pictures" to "images" (Ben's recommendation)

Commented [CC17]: Deleted the word "of" after "kissing" as unnecessary

Commented [CC18]: Deleted "the" before "kissing" as unnecessary

c. Physical:

- i. Kissing a member, legislative employee, or third party, unless kissing is a customary demonstration of affection, is clearly not objected to, and is made in connection with a greeting or parting, such as a peck on the cheek;
- ii. Patting, pinching, or intentionally brushing against a member's, legislative employee's, or third party's body; or
- iii. Sexual contact, intercourse, or assault.

~~e. The examples in subsection E.14.b. are illustrative of the communications and conduct that may constitute sexual harassment if unwelcome and depending on the totality of the circumstances. In that regard, the following should be kept in mind:~~

- ~~i. A single incident may or may not constitute sexual harassment;~~
- ~~ii. Whether a particular action is sexual harassment will depend on the facts and determinations and will be made on a case-by-case basis;~~
- ~~iii. Conduct or communication that might be welcome to one person may be unwelcome to another person. Conduct that might have been welcome~~

between two individuals at one time may become unwelcome at a later time.

~~iv. Other conduct or communication not expressly described in the examples, but that is substantially similar to the examples, may be a violation of this Policy.~~

- d. Petty slights, minor annoyances, and lack of good manners do not constitute sexual harassment unless the slights, annoyances, or lack of manners, when taken individually or in combination and under the totality of the circumstances, meet the standards set forth in this Policy.

Commented [CC19]: New provision based on language in SB23-172.

- 15. **Third party** means a lobbyist, member of the media, or member of the general public who has business at the State Capitol or who is actively doing business with a legislative service agency, the Senate, or the House of Representatives.

F. REPORTING PROCESS

- 1. A member, legislative employee, or third party who believes that he or she is the subject of any type of prohibited harassment, including sexual harassment, or retaliation should discuss the issue with the Office. The member, legislative employee, or third party may file a complaint concerning harassment or retaliation with the Office. If the issue concerns a staff member from the Office, a complainant should discuss the issue with the Director of the Office of Legislative Legal Services and may file a complaint with such Director. When a complaint concerns a staff member from the Office, the Director of the Office of Legislative Legal Services shall fulfill all of the roles and duties assigned to the Office in this Policy.
- 2. Upon receipt of a complaint of prohibited harassment or retaliation, the Office shall assess the complaint and work with the complainant to determine the most appropriate course of action, including whether to proceed with a formal or informal resolution process as described in sections G. and H. of this Policy.
- 3. The Office may initiate a formal harassment or retaliation complaint investigation when the scope and criteria described in this Policy are met and only with the approval of the complainant.

Commented [CC20]: Technical correction for consistency with language in 1 and 2, above

G. INFORMAL RESOLUTION PROCESS

- 1. The informal resolution process is flexible and intentionally open to individualized responses and resources. This process is confidential, and the parties' names, any witnesses' names, the process itself, and any resolution are not subject to disclosure except as necessary to implement any steps agreed to in the resolution or as provided in section I. of this Policy.

Commented [CC21]: Technical correction for consistency with H.1., below

2. The Office shall take such steps as are necessary to understand the complaint and find facts to determine whether the behavior occurred. After the informal fact-finding has concluded, the Office will identify a range of resources to offer to the parties to resolve the issues.
3. Participation in the informal resolution process is voluntary. If the parties agree to the informal resolution process, they are expected to participate fully and in good faith. Nonparticipation may be considered as grounds for more formalized treatment of complaints about the same respondent.
4. The Office shall attempt to complete the informal resolution process within 30 calendar days after the Office receives the complaint. Remedial action such as ongoing coaching, training, or other efforts may be decided upon within the 30-day timeline but may be ongoing after that time frame has elapsed.
- 5.
- ~~6.~~ A complainant who chooses to go through the informal process may, at any point, move the complaint to the formal process described in section H. of this Policy if the alleged behavior qualifies under this Policy.
- ~~7.~~

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H. FORMAL RESOLUTION PROCESS

1. The formal resolution process is a more traditional investigative response to complaints that allege facts that could constitute a violation of this Policy. The formal resolution process is a confidential process, and the parties' names, witness names, the process itself, and any resolution are not subject to disclosure except as necessary to conduct an investigation or implement remedial measures or as otherwise provided in section H.8.c.iv. (II) or I. of this Policy.
2. The Office or third-party investigator shall provide to both the complainant and the respondent the same basic information concerning an explanation of the entire resolution process, including the investigation, timeline, requirements, prohibitions, and resources, including and any anti-retaliation plan. The required notification shall information will ordinarily ~~occur~~ be provided, in the case of the complainant, when the Office receives the complaint, and in the case of the respondent, at the time the respondent is first contacted.
3. The Office or investigator shall conduct a thorough and impartial investigation of the allegations and, in conducting the investigation, shall conform ~~conforming~~ to professional practice standards in the workplace investigations industry.
4. After all evidence has been gathered, the Office or investigator shall provide the complainant and respondent with a summary of the material facts on both sides of the issue and, contingent on the investigation timeline, an opportunity to provide, within a

Commented [CC23]: Reference to new provision added to comply with SB23-286

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reasonable period of time after receipt of the summary, any new, relevant factual evidence information.

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5. Following a review of any new, relevant factual information, the investigator shall analyze the evidence using the preponderance of the evidence standard; this means that findings of fact shall be based on evidence demonstrating that it is more likely than not that the alleged behavior is more likely than not to have occurred. The investigator's findings of facts are final and will not be reinvestigated unless new relevant factual information becomes available.
6. At the conclusion of the investigation, the investigator shall prepare an investigatory report and transmit it to the Office. Investigatory reports are confidential documents and must not be disclosed to either party, witnesses, members, legislative employees, or third parties, except as set forth in this Policy.
7. For complaints alleging harassment, vviolations of this Policy are based on both a subjective standard that the complainant found the action or actions to be offensive and an objective standard that a reasonable person in the complainant's position who is a member of the same protected class as the complainant would have found the action or actions to be offensive.
8. There are different investigative paths in the formal resolution process, depending on who the respondent is, which include:
 - a. Complaints against nonpartisan staff and third parties:
 - i. The Office shall determine whether the complaint falls within the scope of this Policy. If the complaint does not fall within the scope of this Policy, not, the Office may shall dismiss the complaint. Otherwise if the complaint falls within the scope of this Policy, the Office shall ensure that conduct a confidential, impartial investigation is conducted. The Office may conduct the investigation itself, or may hire a professional third-party investigator to de conduct the investigation, or, for a complaint against a third party, may work directly with the third party's employer to determine an investigative course, at the Office's discretion.
 - ii. The Office shall determine whether the facts, based on the investigatory report, establish a violation of this Policy. Following this determination, the Office shall provide to the complainant and the respondent an executive summary of the investigatory report and its determination with the names of the parties and witnesses redacted.
 - iii. Except in the case of lobbyists, tThe Office shall provide an executive summary and recommend recommendations for a range of any corrective actions to the nonpartisan supervisor, or In the case of a complaint against a third party other than a lobbyist, the Office shall work with a the third party's employer, to determine a range of any corrective action. The

Commented [CC26]: Technical rewording to make this standard clearer and more understandable

Commented [CC27]: The changes to this provision relate to the standard in SB23-172. Since that standard applies to harassment claims, and since retaliation claims are also permitted under the policy, it is important to also include the modifier "For complaints alleging harassment" at the beginning.

Commented [CC28]: I am recommending grammatical and technical changes to these provisions to ensure clarity in the complaint process under the Policy. There are no substantive changes in H.8.a. through H.8.c.iii. provisions.

- nonpartisan supervisor or third-party employer shall determine and implement any corrective action. If the nonpartisan supervisor's or third party employer's decision on corrective action is outside the range recommended by the Office, the supervisor or employer shall provide to the Office, in writing, the reasons ~~to the Office in writing~~ for the deviation. The Office may advise the Executive Committee of the Legislative Council if, in its discretion, it finds the ~~statement reasons~~ insufficient to justify a failure to act within the range of recommendations.
- iv. For lobbyists, the Office shall provide an executive summary to the Executive Committee of the Legislative Council. The Executive Committee of the Legislative Council shall treat the summary as a complaint under Joint Rule 36.
- b. Complaints against partisan staff:
- i. The Office shall refer the matter to the appropriate Committee. The Committee shall determine, after consultation with the Office, whether the complaint falls within the scope of this Policy. If the complaint does not fall within the scope of this Policy, the Committee ~~may shall~~ dismiss the complaint. ~~Otherwise~~ If the complaint falls within the scope of this Policy, the Committee shall instruct the Office to hire a professional third-party investigator or direct the Office to conduct the investigation.
 - ii. The Committee shall determine whether the facts, based on the investigatory report, establish a violation of this Policy. Following this determination, the Committee shall provide to the complainant and the respondent an executive summary of the investigatory report and its determination with the names of the parties and witnesses redacted.
 - iii. The Committee shall provide an executive summary and ~~recommend~~ recommendations for a range of corrective actions to the staff member's caucus leadership and the supervising member. ~~a range of any corrective actions~~. The supervising member shall determine and implement any corrective action, in consultation with caucus leadership. If the supervising member's decision on corrective action is outside the range recommended by the Committee, the supervising member shall provide to the Committee, in writing, the reasons ~~to the Committee in writing~~ for the deviation. The Committee may, without identifying a party other than the supervising member, make this document public if, in its discretion, it finds the ~~statement reasons~~ insufficient to justify a failure to act within the range of recommendations.
- c. Complaints against members:
- i. The Office shall refer the matter to the appropriate Committee. The Committee shall determine, after consultation with the Office, whether the complaint falls within the scope of this Policy. If the complaint does not fall within the scope of this Policy ~~not~~, the Committee ~~may shall~~ dismiss the complaint. ~~Otherwise~~ If the complaint falls within the scope of this

- Policy, the Committee shall instruct the Office to hire a professional third-party investigator or direct the Office to conduct the investigation.
- ii. The Committee shall determine whether the facts, based on the investigatory report, establish a violation of this Policy. Following this determination, the Committee shall provide to the complainant and the respondent an executive summary of the investigatory report and its determination with the names of the parties and witnesses redacted.
 - iii. The Committee shall provide an executive summary and recommend recommendations for a range of corrective actions, if appropriate, to the member's chamber leadership, ~~a range of any corrective action~~. Chamber leadership shall determine and implement any corrective action. If the chamber leadership's decision on corrective action is outside the range recommended by the Committee, chamber leadership shall provide to the Committee, in writing, the reasons ~~to the Committee in writing for the deviation~~. The Committee may, without identifying a party other than its chamber leadership, make this document public if, in its discretion, it finds the statement reasons insufficient to justify a failure to act within the range of recommendations.

iv. When a member is found to have violated this Policy, the Office shall: ~~make available to the public the executive summary and the respondent's name unless the committee decides by a two-thirds vote not to release the information.~~

(1) When the complaint is based on harassment that is not sexual in nature, make available to the public the executive summary and the respondent's name unless the committee decides by a two-thirds vote not to release the information; or

(2) When the complaint is based on sexual harassment and an investigation concludes that the member who is the subject of the complaint is culpable of any act of sexual harassment, upon a request through the "Colorado Open Records Act," make available to the public records of the sexual harassment complaint made against the member and the results or report of the investigation; except that the identity of any complainant, of any person accused of sexual harassment who is not a member, of any victim, and of any witness, and any other information that would identify any such person, will be redacted to permit inspection without revealing any part of the record that would not be subject to disclosure pursuant to any other provision of this Policy or the Colorado Revised Statutes.

d. Complaints against employees of the Office go to the Director of the Office of Legislative Legal Services. The Director shall either conduct a confidential, impartial investigation or may hire a professional third-party investigator to ~~do so~~, at the Director's discretion conduct a confidential, impartial investigation. The

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Director shall make all findings and determinations relevant to this Policy and shall implement accountability measures, when applicable.

9. The Office, ~~the Director, or the Committee~~, as applicable, shall strive to complete the formal resolution process within 90 calendar days.

Commented [CC31]: Technical correction to include the Director in this

I. CONFIDENTIALITY

1. The Office shall keep confidential all information received and ~~retained-maintained~~ concerning inquiries and complaints under this Policy, except:
- a. As necessary to conduct an investigation or implement remedial or protective measures;
 - b. At the beginning and conclusion of the informal resolution process, the Office, following notice to a complainant when practicable, may disclose to the respondent's chamber leadership or nonpartisan supervisor the issues raised without disclosing the identity of any person involved in the process except the respondent;
 - c. At the beginning and conclusion of the formal resolution process, the Office, following notice to a complainant when practicable, shall disclose to the respondent's chamber leadership or nonpartisan supervisor the issues raised without disclosing the identity of any person involved in the process except the respondent;
 - d. The respondent's chamber leadership or nonpartisan supervisor may relay information to their successors, to the other chamber's leadership, or another nonpartisan supervisor as needed; and
 - e. The Office shall collect nonidentifying statistical data regarding complaints submitted pursuant to this Policy and shall annually submit an aggregate report to the General Assembly on complaints received during the previous fiscal year; ~~and~~
 - f. Pursuant to section 24-72-204 (9), C.R.S., records of sexual harassment complaints made against a member under this Policy and the results or report of investigations regarding the alleged sexual harassment will be made available for inspection if the investigation concludes that the member is culpable of any act of sexual harassment; except that the identity of the complainant, of any person accused of sexual harassment who is not a member, of any victim, and of any witness, and any other information that would identify any such person, will first be redacted.

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2. The Office shall create a record of each complaint handled under this Policy and shall maintain the records in secure and confidential files for ~~10 years or until after the last party involved is no longer within the legislative workplace, whichever is longer five years after the later of:~~

a. The date the Office made or received the record; or

a.b. The date of the final disposition of the complaint or a related action.

Commented [CC34]: Modifying to be consistent with recordkeeping provision in SB23-172

3. ~~Except as otherwise provided in section H.8.c.iv. and section I.1.f. of this Policy,~~

~~P~~Pursuant to Joint Rule 38, members and legislative employees are required to maintain confidentiality of all information received concerning inquiries and complaints under this Policy, and third parties are required to keep information related to complaints filed under this Policy confidential. ~~Except as otherwise provided in section H.8.c.iv. and section I.1.f. of this Policy and Joint Rule 38,~~

Commented [CC35]: Consistent with SB23-286

4. A violation of these confidentiality provisions may constitute a violation of this Policy, subject to the informal or formal processes described in sections G. and H. of this Policy.