



**Report to the
Colorado General Assembly**

DRAFT

**Legislative
Workplace Interim
Study Committee**

Prepared by

*The Colorado Legislative Council
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October 2018*

Legislative Workplace Interim Study Committee

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Representative Kim Ransom	Senator Bob Gardner
Representative Faith Winter	Senator Dominick Moreno

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This report is also available on line at:

<http://leg.colorado.gov/committees/legislative-workplace-interim-study-committee/2018-regular-session>

Committee Charge

Pursuant to Interim Committee Request Letter 2018-15, the Legislative Workplace Interim Study Committee was formed to accomplish the following:

- evaluate the findings and recommendations from the 2018 Legislative Workplace Study authored by Investigations Law Group (ILG);
- study how much taxpayer money has been expended to pay for third-party investigations to investigate workplace harassment complaints; and
- make recommendations to the Executive Committee of the Legislative Council regarding changes to the workplace harassment policy set forth in Joint Rule 38 of the Senate and the House of Representatives, the General Assembly's workplace harassment policies, legislative human resources staffing and structure, and how to promote cultural change regarding harassment in the legislative workplace.

Committee Activities

The committee held five meetings during the 2018 interim, and studied topics relating to the legislative workplace, including legislative workplaces in other states; human resources department structure; informal and formal workplace harassment complaints and the resolution process; the formal investigation process; culture, training, and transparency; and estimated costs.

The committee heard presentations from, and engaged in discussion with, representatives from the following organizations:

- the National Conference of State Legislatures;
- the Town of Parker;
- the University of Colorado Office of Institutional Equity and Compliance;
- the Colorado Department of Personnel and Administration;
- the National Women's Law Center;
- the U.S. Equal Employment Opportunity Commission; and
- the law office of Truhlar and Truhlar

The following sections discuss the committee's activities during the 2018 legislative interim. The report concludes with recommendations from the committee for consideration by the Executive Committee of the Legislative Council, who in turn may adopt any or all of the recommendations or request bill drafts.

Background

At the end of 2017, the Executive Committee of the Legislative Council issued a request for proposals (RFP) to analyze and evaluate the existing legislative culture as it relates to workplace harassment. The RFP also required an analysis of existing workplace rules, policies, and procedures of the General

Assembly. During the 2018 legislative session, the Executive Committee of the Legislative Council contracted with ILG to conduct the analysis and evaluation.

On April 2, 2018, ILG issued a report entitled *General Assembly 2.0 A Transformational Approach to Legislative Workplace Culture: Analysis and Evaluation of the Colorado General Assembly's Culture, Policies, and Procedures as They Relate to Workplace Harassment*. The report includes a summary of findings and recommendations; a description of the legal, social, and historical background of workplace harassment; a summary of the steps in ILG's process used to gather and analyze data; ILG's recommendations for a next-generation plan; a draft of a new policy and set of procedures for addressing workplace harassment in the General Assembly; and reference sections containing details on the data gathered and observations on the data. The report can be found at: http://leg.colorado.gov/sites/default/files/the_report_final_2.pdf.

On April 26, 2018, the Legislative Council authorized the Legislative Workplace Interim Study Committee to convene during the 2018 legislative interim. The interim committee was directed to address the topics outlined in the committee's charge as it relates to the ILG report and make recommendations to the Executive Committee of the Legislative Council.

Current Structure and Process for Changes to Legislative Workplace Laws, Rules, and Policies

The Office of Legislative Legal Services (OLLS) staff provided an overview of legislative workplace laws, rules, and policies. Information was presented regarding federal and state laws, including Title VII of the federal Civil Rights Act of 1964 and Article 34 of Title 24, C.R.S., which address discrimination, harassment, and retaliation in the employment context. The OLLS staff discussed state laws that may need to be changed based on the recommendations included in the ILG report, including adopting laws to create a human resources department for the legislative branch and revisions to the Colorado Open Records Act.

The OLLS staff reviewed Joint Rule 38 of the Senate and House of Representatives and the Workplace Harassment Policy of the General Assembly. The committee received information regarding how Joint Rule 38 of the Colorado General Assembly influences the Workplace Harassment Policy. The OLLS staff outlined the procedures for revising Joint Rule 38 of the Colorado General Assembly and the Workplace Harassment Policy. The OLLS staff discussed the possible role the legislative culture committees, recommended in the ILG report, could have in reviewing future changes to the Workplace Harassment Policy.

Committee recommendations. As a result of its discussions, the committee recommends ----- (*note: this section will be updated based on final recommendations of the committee*).

Legislative Workplaces in Other States

Staff from the National Conference of State Legislatures (NCSL) presented to the committee on sexual harassment policies in other states. Material was also presented on procedures in other states for investigating legislators for sexual harassment.

Sexual harassment policies. According to a NCSL representative, approximately 125 bills have been introduced throughout the country to address legislative sexual harassment in the last year and most of the bills address internal policies. Additionally, at least 13 states have set up committees to look at legislative workplace harassment policies. Specifically, NCSL staff referenced policy changes in Georgia, Maryland, Maine, and Illinois. The committee received information regarding the workplace harassment hotline set up in Illinois and efforts to address workplace harassment in Washington, Indiana, and Virginia. Efforts in California to address workplace harassment were highlighted, including the final recommendations of the California Legislature's Subcommittee on Sexual Harassment Prevention and Response issued on June 21, 2018, and the establishment of the Legislative Workplace Conduct Unit by the California Legislative Counsel.

The committee received information from NCSL staff about selected differences in 2018 sexual harassment policies and state policies from California, Maryland, New Mexico, and Wyoming. While discussing matters related to confidentiality of investigations, the presenters noted that California's policy allows for legislative investigatory documents to be released if claims are substantiated, whereas most other state policies require such documents to be kept confidential to the extent possible.

Legislator investigations. The committee received information regarding procedures for investigating a member of the legislature for sexual harassment. The information presented included an explanation of the various entities that investigate complaints, punishment recommendations, and the composition of committees that impose consequences. The presenters noted that Maryland is the only state that has a review committee comprised of members from both chambers.

Human Resources Department Structure

The ILG report recommends that the Colorado General Assembly create an Office of Legislative Culture (OLC) led by a HR director who would oversee three positions, including an Equal Employment Opportunity (EEO) Officer, a workplace culture specialist, and a workplace culture ombudsman.

To better understand the ILG recommendations and their application in the legislative workplace, the committee heard testimony about the structure of HR departments from NCSL, HR administrators from the Town of Parker and the University of Colorado – Boulder (CU), and the recently hired Legislative HR Administrator.

NCSL specifically discussed state legislature HR office organization in terms of location, jurisdiction, and scope, and the different models employed, ranging from no official HR office or personnel, to caucus- or chamber-based offices to a centralized office that serves all legislative personnel. The HR administrators from the Town of Parker and CU explained their respective organizational structures and the responsibilities of various positions, particularly in relation to harassment complaints and trainings.

The Legislative HR Administrator made recommendations to the committee about the size and employee relation function of the new office.

Committee discussion. The OLLS staff facilitated committee discussion regarding the HR structure recommended in the ILG report. Topics addressed during these discussions included:

- what HR functions should be handled by the new agency or department;
- whether a new legislative office should be created or if the HR functions and staff should be housed in an existing legislative staff agency;
- how many HR employees are necessary and where the physical HR office should be located; and
- establishing an anonymous hotline and its operation.

Committee recommendations. As a result of its discussion, the committee recommends----- (note: this section will be updated based on final recommendations to the committee).

Complaint and Resolution Process

The ILG report explains how workplace harassment complaints vary in their seriousness and complexity and recommends there be informal and formal ways to handle or process complaints depending upon the circumstance.

Informal resolution process. Informal procedures, as outlined in the ILG report, are voluntary and confidential but flexible enough to address situations in an expedient, problem-solving manner. The report stresses the goal of an informal process is to stop or redirect behavior before it escalates. The ILG report recommends that the HR staff offer mediation, meetings, coaching, training, crisis management, referrals, and other remedial actions in these circumstances.

Formal complaint process. The formal procedure is a more traditional investigatory process that substantiates a complaint with evidence and an investigation. The ILG report outlines the formal resolution process and the roles of the HR administrator, EEO officer, and third-party investigators in the process. The ILG report recommends that an independent EEO advisory panel and legislative culture committees be created to address formal complaints filed against legislators and employees of the OLC.

Overall process. Other complaint and resolution recommendations applied to both the informal and formal process and proposed expanding the number of contacts or positions who may receive a report, including an anonymous hotline option, while centralizing responsibility for tracking purposes.

Further recommendations touched upon confidentiality, anti-retaliation plans, notifications, timelines, privacy, and open records.

The committee heard testimony about the ILG recommendations from OLLS staff, the Legislative HR Administrator, and a representative from the Colorado Department of Personnel and Administration. This panel also discussed how complaints are handled in the private sector and other state agencies.

Committee discussion. The OLLS staff facilitated committee discussion regarding the ILG recommendations on the complaint and resolution process. Topics addressed during these discussions included:

- community safety, confidentiality, and overriding factors to elevate a complaint from informal to formal;
- lobbyists and Joint Rule 36, which addresses lobbying practices;
- mandatory or voluntary participation in a complaint investigation for employees, third parties, lobbyists, legislators, and staff; and
- composition, responsibility, and appointment of the independent EEO advisory panel and legislative culture committee to investigate complaints against legislators.

Committee recommendations. As a result of its discussion, the committee recommends----- (*note: this section will be updated based on final recommendations to the committee*).

Culture, Training, and Transparency

The committee reviewed the ILG recommendations regarding culture, training, and transparency. Additionally, the committee heard from a panel of experts including representatives from the National Women’s Law Center, the U.S. Equal Employment Opportunity Commission, and the law office of Truhlar and Truhlar. The panel discussed ways to improve workplace culture, what training works best, the role of that training, and the importance of transparency.

Culture. The ILG report includes the following recommendations regarding culture:

- defining the expectations for workplace behavior above legal compliance and committing to these higher expectations;
- empowering one of the newly hired OLC employees to implement the commitment to these higher expectations;
- providing tools to proactively meet the higher expectations; and
- offering training that reflects the General Assembly’s vision for how its community will act, not just how it will not act.

The ILG report outlines other options to improve legislative culture, including creating additional protections for interns; creating a bicameral orientation for interns; and conducting positive outreach, training, team building, listening sessions, coaching, workplace assessments, and awareness campaigns.

In changing culture, the panelists highlighted the prominence of leadership in bringing about change in the workplace. The panel discussed elements to include in the respectful workplace policy, including having clear definitions, providing examples of harassment, and prohibiting bullying. The panel addressed developing a culture survey to improve workplace culture.

During its deliberations, the committee discussed developing a code of conduct. The ILG report highlights a document developed by the Kentucky Legislative Research Commission that contains a mission statement, vision statement, and values statement. The committee received codes of conduct from various Colorado Executive Branch agencies to review.

Training. With regard to training, the ILG report recommends requiring annual trainings for all members of the legislative workplace, which includes legislators, partisan staff, nonpartisan staff, legislative aides, student interns, lobbyists, vendors, custodians, security personnel, volunteers, and others in the legislative workplace. The ILG report recommends the following training requirements and opportunities:

- one orientation training session and an annual retraining session on respect in the workplace and anti-harassment policies for members of the legislative workplace and third parties;
- one orientation training session for legislators, directors, managers, and supervisors specific to their obligations as leaders;
- one additional training for student interns as part of the student intern orientation program;
- periodic voluntary assertiveness training; and
- additional specific training for complaint contacts and OLC staff.

Regarding training, the panelists suggested best practices for training. Those suggestions included making training mandatory for employees, providing training in small groups based on employee classifications, potentially hiring outside trainers, addressing both harassment and workplace culture in the trainings, and including role playing and bias awareness activities. The panel cautioned that training should not be the only tool used to change workplace culture.

Transparency. The ILG report outlines recommendations regarding annual reporting and review of the workplace policy. The annual report is to include the total number of complaints and the resolution of each complaint. According to the ILG recommendations, the report should be appropriately redacted to protect confidential personnel decisions and party identities. The ILG recommendations include having the OLC maintain a publicly available list of legislators who have attended mandatory and voluntary trainings. Finally, the ILG report outlines the process for the annual review of the workplace policy. The panel touched on the importance of transparency and how it adds credibility to the process. The panel suggested that any reports must protect confidentiality by providing aggregated information.

Committee discussion. The OLLS staff facilitated committee discussions regarding the ILG recommendations on culture, training, and transparency. Topics addressed during these discussions included:

- whether there should be a separate workplace culture policy or if provisions of culture should be incorporated into the workplace harassment policy;
- whether there should be a workplace culture specialist in the HR office;
- what training should be offered to legislators, lobbyists, aides, interns, and partisan and nonpartisan staff; and
- whether to create and conduct awareness campaigns to reinforce the General Assembly's values and commitment to a respectful workplace.

Committee recommendations. As a result of its discussions, the committee recommends ----- (note: this section will be updated based on final recommendations of the committee).

Estimated Costs

Fiscal impact of ILG recommendations. Legislative Council Staff provided a memorandum to the committee estimating the preliminary fiscal impact of implementing ILG's recommendations. The memo identified the costs of hiring new employees in the newly created OLC; hiring a third-party ombudsman; creating an independent EEO Advisory Panel; establishing new standing committees to hear complaints against legislators; establishing an anonymous hotline; creating and administering new trainings; and other costs associated with establishing a new legislative office. The analysis estimated the total cost to be \$490,067 in FY 2019-20 and \$530,316 in FY 2020-21. The full memorandum can be found as Addendum A.

Third-Party Investigation Costs. Legislative Council Staff also provided a memorandum to the committee outlining the amount of money the General Assembly spent on third-party investigations related to workplace harassment. From FY 2013-14 to FY 2017-18, \$74,833 has been spent on third-party investigations related to workplace harassment complaints involving the General Assembly. The full memorandum can be found as Addendum B.

Summary of Recommendations

As a result of the committee's activities, the committee made the following recommendations to the Executive Committee of the Legislative Council for consideration.

(Insert Recommendation Documents Prepared by the Office of Legislative Legal Services)

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Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<http://leg.colorado.gov/committees/legislative-workplace-interim-study-committee/2018-regular-session>

Meeting Date and Topics Discussed

July 9, 2018

- ◆ Review of current structure of and process for changes to legislative workplace laws, rules, and policies
- ◆ Overview of legislative workplaces in other states
- ◆ Overview of the Investigations Law Group (ILG) 2018 Legislative Workplace Study
- ◆ Panel discussion concerning ILG recommendations regarding human resources department structure

August 15, 2018

- ◆ Presentation on legislative workplaces in other states
- ◆ Presentation regarding the fiscal impact of the ILG recommendations
- ◆ Committee discussion of initial drafting concepts regarding human resources department structure
- ◆ Overview of ILG recommendations regarding the complaint and resolution process
- ◆ Panel discussion of ILG recommendations regarding the complaint and resolution process
- ◆ Committee discussion of initial drafting concepts regarding the complaint process, informal resolution process, and formal investigation process

August 30, 2018

- ◆ Committee discussion of initial drafting concepts regarding formal investigation and resolution process
- ◆ Overview of ILG recommendations regarding culture, training, and transparency
- ◆ Panel discussion of ILG recommendations regarding culture, training, and transparency

- ◆ Public testimony
- ◆ Committee discussion of initial drafting concepts regarding culture, training, and transparency

September 13, 2018

- ◆ Review of initial committee positions and address remaining questions
- ◆ Committee discussion and drafting instructions for committee recommendations

October 11, 2018

- ◆ Review and approval of final committee recommendations

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Memorandum

August 10, 2018

TO: Members of the Legislative Workplace Culture Study Committee

FROM: Aaron Carpenter, Fiscal Analyst, 303-866-4918

SUBJECT: Fiscal Estimate for the Office of Legislative Culture

Summary

Below please find an estimate on the cost to create the Office of Legislative Culture (OLC), as recommended by Investigations Law Group (ILG). This analysis estimates the total cost to be \$490,067 in FY 2019-20 and \$530,316 in FY 2020-21, paid from the General Fund. **Please note that these estimates are preliminary and subject to change with new information or the timing and content of any proposed legislation.**

Background

During the 2018 Regular Session, the General Assembly hired ILG to study workplace harassment at the General Assembly and to make recommendations on how to improve the workplace culture. ILG recommended that the General Assembly create the OLC, staffed with a full-time Human Resource Director, a full-time Equal Employment Opportunity (EEO) Officer, a part-time Workplace Culture Specialist that would eventually transition to full-time, and a part-time, third-party Ombudsman. The report also recommended training, setting up a hotline to report harassment, creating an independent panel to oversee complaints against legislators, and creating specific standing legislative committees.

Assumptions

This estimate assumes that the OLC will be its own office and will initially include the recommended staffing of 2.5 FTE. This includes the positions of: 1.0 FTE Human Resource Director, 1.0 FTE EEO Officer, 0.5 FTE Workplace Culture Specialist, and a contracted, third-party Workplace Culture Ombudsman. In FY 2020-21, this estimate incorporates the recommendation that the Culture Specialist transition to full-time, increasing the total FTE number for the OLC to 3.0 FTE. Although the General Assembly has hired a Human Resource Coordinator that could transition into the Human Resource Director role, this analysis estimates the total cost to implement the recommendations and therefore includes the full cost of a Human Resource Director. The estimate also assumes that additional office space relative to current costs will be needed to house the OLC.

The Office of Legislative Legal Services (OLLS) will require 0.2 FTE Staff Attorney to advise the EEO Advisory Panel and to staff and advise each chamber’s standing committee. These amounts are prorated in the first fiscal year.

Number of complaints. For this estimate, it is assumed that there will be four complaints that require a meeting of the EEO Advisory Panel and the respective chamber’s standing committee each year. For each complaint, there will be two EEO Advisory Panel meetings and one meeting for the respective chamber’s standing committee. The EEO Advisory Panel meetings will consist of one meeting to hire an investigator and one to review the investigation, determine if there was a violation, and recommend any consequences. Each chamber’s respective standing committee will hear the findings of the investigation, any recommendations from the EEO Advisory Panel, and recommend consequences. The estimate further assumes that there will be 12 members on the House’s standing committee and six members on Senate’s standing committee. Based on the total number of legislators in each chamber, the estimate assumes that three of the complaints will go to the House committee and one will go to the Senate. Each committee will also have one meeting for harassment training, for a total of four meetings in the House and two in the Senate. Finally, the estimate assumes that two meetings for the House and one for the Senate will happen during the interim.

State Expenditures

If the OLC is created on July 1, 2019, state General Fund expenditures will increase by \$490,067 and 2.6 FTE in FY 2019-20, and by \$530,317 and 3.2 FTE in FY 2020-21 and future years, as shown in Table 1 and discussed below.

**Table 1
General Fund Expenditures for the OLC**

	FY 2019-20	FY 2020-21
Personnel	\$278,022	\$322,197
Standard Operating and Capital Outlay	\$16,294	\$2,850
Third Party Ombudsman	\$41,000	\$41,000
New Office Costs	\$18,175	\$18,175
Hotline	\$12,000	\$12,000
EEO Panel	\$49,320	\$49,320
Standing Committees	\$6,120	\$6,120
Training Expenses	\$5,000	\$5,000
Centrally Appropriated Costs	\$64,136	\$73,655
Total	\$490,067	\$530,317
FTE Total	2.6 FTE	3.2 FTE

Personnel costs. Implementing the recommendations from ILG is estimated to increase expenditures by \$278,022 and 2.6 FTE in FY 2019-20 and by \$322,197 and 3.2 FTE in FY 2020-21 to hire a full-time Human Resource Director, a full-time EEO Officer, and a part-time Workplace Culture Specialist who transitions to full-time in FY 2020-21. The OLLS will also require 0.2 FTE Staff Attorney. These costs are prorated for the General Fund paydate shift for any new staff in FY 2019-20.

Standard operating and capital outlay costs. It is estimated that expenditures will increase by \$16,294 in FY 2019-20 and \$2,850 in FY 2020-21. This includes operating expenses such as supplies and telephones as well as one-time capital outlay expenses in FY 2019-20 including furniture, computers, and software for each additional FTE in the OLC.

Third-party ombudsman. It is estimated that contracting a third-party ombudsman will cost \$41,000 per year. This rate is based on the average salary of an ombudsman at the University of Colorado.

Office costs. Starting in FY 2019-20, the OLC will have additional costs associated with operating its office. Expenditures will increase by \$18,175 per year starting in FY 2019-20 for any in-state and out-state travel, membership dues (such as the Employers Council), and other miscellaneous costs. This number is based on current legislative office expenditures, adjusted for the number of employees.

Hotline contractor. ILG recommended that the General Assembly set up an anonymous reporting hotline to report harassment at the Capitol. Starting in FY 2019-20, this will increase expenditures by \$12,000 per year to contract with a vendor.

EEO Advisory Panel. Starting in FY 2019-20, expenditures will increase by \$49,320 per year for the EEO Advisory Panel. In the last fiscal year, there were six investigations ranging from \$2,310 to \$20,825, for a total of \$50,158. This estimate assumes that two investigations will be on the lower end of the range, estimated at about \$2,500 per investigations, and two at the high end of \$20,000, totaling \$45,000 per year. Assuming the five-person panel is organized similarly to the Independent Ethics Commission, it is assumed that EEO Advisory Panel members will not be compensated, but will be reimbursed for any actual and necessary expenses. Reimbursement for EEO Advisory Panel members are estimated to increase expenditures by \$4,320 per year.

Standing committees. It is estimated that expenditures will increase by \$6,120 per year starting in FY 2019-20 for members to serve on their chamber's standing committee. For every meeting that falls in the interim, there are increased costs for member per diem and travel reimbursement. Meetings assumed to occur during the legislative session will not incur additional costs.

Training expenses. Starting in FY 2019-20, expenditures will increase by \$5,000 per year to create and purchase harassment training materials, such as videos, and surveys.

Legislative service agencies. Starting in FY 2019-20, it is estimated that workload for legislative service agencies that are currently handling harassment complaints will decrease. It is assumed that this decrease in workload will not require a reduction in appropriations for any individual agency.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills. These costs, which include supplemental employee retirement payments, are estimated to be \$64,136 in FY 2019-20 and \$73,655 in FY 2020-21. This cost also includes 873 square feet of leasing space, per FTE, at \$23 per square foot. This is based on the average lease rate of other departments in the area and the Office of the State Architect's average of square feet of private office space needed per worker.



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Memorandum

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August 9, 2018

TO: Legislative Workplace Interim Study Committee

FROM: Amanda King, Senior Research Analyst, 303-866-4332

SUBJECT: Third-party Investigator Payments

Overview of Payments for Third-Party Investigators

This memorandum provides information about the amount of taxpayer money that has been expended to pay for third-party investigators to investigate workplace harassment complaints involving the General Assembly. The Legislative Workplace Interim Study Committee is charged with studying the amount of taxpayer money that has been expended to pay for third-party investigators to investigate workplace complaints for the General Assembly. Typically, when an incident of workplace harassment occurs that is subject to the Workplace Harassment Policy of the General Assembly, the Office of Legislative Legal Services (OLLS) has been involved to address any related employment law questions. When an investigation is warranted, OLLS hires a third-party investigator, such as Employers Council, to conduct the investigation. Legislative Council Staff contacted the four legislative service agencies, the Secretary of the Senate, and the Chief Clerk of the House to confirm that all third-party investigations in the last five fiscal years have been coordinated by OLLS. According to a representative of OLLS, \$74,833.25 has been spent between FY 2013-14 through FY 2017-18 for third-party investigations related to workplace harassment complaints involving the General Assembly.