

PROPOSED RULE CHANGES RELATED TO SB23-172 AND SB23-286

1. Joint Rules

That in the Joint Rules of the Senate and House of Representatives, **amend** Joint Rule No. 38 as follows:

**38. WORKPLACE HARASSMENT POLICY AND
WORKPLACE EXPECTATIONS POLICY**

- (a) ***Declaration.*** The General Assembly is committed to maintaining a workplace that encourages mutual respect, ~~and~~ THAT promotes respectful, professional, and congenial relationships, and that is free from harassment from or toward legislators, legislative employees, or third parties. The citizens of the State of Colorado expect their elected officials to behave in a manner befitting the honor and privilege they hold as representatives of the citizens of Colorado. The General Assembly holds the members of its community and, IN PARTICULAR, legislators ~~in particular~~, to a higher standard of conduct than simply avoiding unlawful harassment. When disrespectful behavior and harassment persist, even when not unlawful or directed at an individual because that person is a member of a protected class, it diminishes the dignity and stature of the institution of the General Assembly and can lead to unlawful harassment. <{***These are technical, grammatical changes.***}>
- (b) ***Workplace Harassment Policy.***
- (1) The Office of Legislative Workplace Relations in the Office of Legislative Legal Services, in consultation with the secretary of the Senate, the chief clerk of the House of Representatives, the State Auditor, and the directors of the nonpartisan staff agencies of the General Assembly, shall develop a Workplace Harassment Policy. The Workplace Harassment Policy is applicable to all legislators; legislative employees; ~~except to such legislative employees who are subject to the state personnel system;~~ and third parties. The Policy, and any amendment to the Policy, is subject to the approval of the Executive Committee of the Legislative Council. <{***Moving this exception language to the definition of "legislative employee" to avoid repetition of that language throughout the rule.***}>
- (2) The Workplace Harassment Policy must include:
<{***Unless otherwise indicated, changes in this subsection (2) are technical to ensure that***}>

the paragraphs all flow off of this introductory language.>

- (A) Both a formal and informal complaint resolution process;
- (B) A PROVISION SPECIFYING that, except as necessary to complete an investigation and provide any accommodations, the identity of a complainant must not be disclosed to anyone, including members of a Workplace Harassment Committee and leadership;
- (C) A PROVISION SPECIFYING that the information obtained during the informal complaint process or the formal complaint process remains confidential, except as **authorized OTHERWISE PROVIDED IN SECTION 24-72-204 (9), COLORADO REVISED STATUTES, OR** in the Workplace Harassment Policy; <{*Change related to SB23-286*}>
- (D) A PROVISION SPECIFYING that, except as specifically allowed under the Workplace Harassment Policy **OR AS OTHERWISE PROVIDED IN SECTION 24-72-204 (9), COLORADO REVISED STATUTES,** legislators and legislative employees shall keep all matters relating to an alleged violation of the Policy confidential and third parties shall keep such matters confidential to the extent permitted by law; <{*Change related to SB23-286*}>
- (E) A PROVISION SPECIFYING that both complainants and respondents be given equal access to information and services;
- (F) A PROVISION SPECIFYING that a violation under the Policy must be founded on a claim of harassment, based on an individual's disability, race, creed, color, sex **(INCLUDING PREGNANCY, CHILDBIRTH, AND RELATED MEDICAL CONDITIONS),** sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry, or **CITIZENSHIP STATUS, MARITAL STATUS, GENDER IDENTITY OR EXPRESSION, TRANSGENDER STATUS, OR MEMBERSHIP IN any other class protected by state or federal law (REFERRED TO IN THIS JOINT RULE NO. 38 AS "PROTECTED CLASS")** or THAT A VIOLATION MUST BE **FOUNDED ON A CLAIM OF** an act of retaliation under the Policy; <{*"marital status" was added to the employment discrimination statute by SB23-172, and gender identity and gender expression were added by HB21-1108. Other additions are for consistency with the list of protected classes in the current Workplace Harassment Policy. See*}>

the related note in the policy.>

- (G) A PROVISION SPECIFYING that factual determinations MUST be found by a preponderance of the evidence standard and that violations OF THE WORKPLACE HARASSMENT POLICY **FOR A CLAIM OF HARASSMENT** MUST be 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 would have found the action or actions to be offensive; and <since a person could make a retaliation claim under the policy, this language is necessary to differentiate the standard for a harassment claim>
- (H) A PROVISION SPECIFYING THAT if, following a formal investigation, it is found that a lobbyist has violated the Workplace Harassment Policy, an executive summary of the findings of any investigation must be forwarded to the Executive Committee of the Legislative Council, ~~who shall~~ WHICH MUST treat the summary as a complaint under Joint Rule 36.

(c) ***Workplace Expectations Policy.***

- (1) The Office of Legislative Workplace Relations in the Office of Legislative Legal Services, in consultation with the secretary of the Senate, the chief clerk of the House of Representatives, the State Auditor, and the directors of the nonpartisan staff agencies of the General Assembly, shall develop a Workplace Expectations Policy. The Workplace Expectations Policy is applicable to all legislators; legislative employees; ~~except such legislative employees who are subject to the state personnel system;~~ and third parties. The Policy and any amendment to the Policy ~~is~~ ARE subject to the approval of the Executive Committee of the Legislative Council. <fixing subject-verb agreement issue and moving exception language to definition of legislative employee.>
- (2) The Workplace Expectations Policy must include BEHAVIORAL EXPECTATIONS FOR LEGISLATORS, LEGISLATIVE EMPLOYEES, AND THIRD PARTIES THAT FOSTER A CIVIL AND PROFESSIONAL WORK ENVIRONMENT IN WHICH ALL INDIVIDUALS ARE TREATED WITH DIGNITY AND RESPECT. THE POLICY MUST SPECIFY THE INDIVIDUALS OR OFFICES TO WHOM CONCERNS REGARDING BEHAVIOR THAT FAILS TO COMPORT WITH THE EXPECTATIONS UNDER THE POLICY SHOULD BE

DIRECTED AND THE EXTENT TO WHICH ATTEMPTS AT RESOLVING ANY CONCERNS ARE CONFIDENTIAL. <*Proposed change to the rule specifying the contents of the workplace expectations policy to capture the language in the policy about the work environment, with the addition of the "civil and professional" concept to be consistent with the intent of the current Workplace Expectations Policy. References to an "informal process" are removed since the policy does not currently outline a process, informal or otherwise, and removal of that language will provide more flexibility in resolving issues, whether informally or through a more formal "complaint" process, as warranted by the circumstances. With regard to confidentiality, this proposal removes the specifics from the rule, with the idea that specific language be added in the policy to allow a person raising a concern under the policy to request that the matter be kept confidential, and picking up the exception language in (B), below, to allow disclosure of otherwise confidential information "as necessary to resolve the concern and provide any accommodations."*>

- ~~(A) — An informal complaint resolution process;~~
- ~~(B) — That, except as necessary to complete the informal complaint resolution process and provide any accommodations, the identity of a complainant must not be disclosed to anyone, including members of a Workplace Harassment Committee and leadership;~~
- ~~(C) — That the information obtained during the informal complaint process remains confidential, except as authorized in the Workplace Harassment Policy; and~~
- ~~(D) — Except as specifically allowed under the Workplace Expectations Policy, legislators and legislative employees shall keep all matters relating to an alleged violation of the Policy confidential and third parties shall keep such matters confidential to the extent permitted by law.~~

(d) ***Personnel Manuals and Review.***

- (1) Following approval by the Executive Committee of the Legislative Council, the Workplace Harassment Policy and the Workplace Expectations Policy must be included in each agency's or house's personnel manual or equivalent document and posted prominently on the General Assembly's home page on the internet.

(2) The Office of Legislative Workplace Relations shall annually review the Policies and, after consultation with the secretary of the Senate, the chief clerk of the House of Representatives, the State Auditor, and the directors of the nonpartisan staff agencies of the General Assembly, may recommend changes to the policies to the Executive Committee.

(e) ***Confidentiality.***

(1) Except as permitted under the Workplace Harassment Policy or the Workplace Expectations Policy **OR AS OTHERWISE PROVIDED IN SECTION 24-72-204 (9), COLORADO REVISED STATUTES**, all documents related to any inquiry or complaint under either of the policies are confidential and are not subject to public inspection under part 2 of article 72 of title 24, Colorado Revised Statutes. <{***Change related to SB23-286***}>

(2) Meetings of a Workplace Harassment Committee at which a complaint, investigation, or remedial action is discussed may be conducted in executive session as described in section 24-6-402 (3)(a)(III), Colorado Revised Statutes.

(f) ***Training.***

(1) Prior to the commencement of each regular session of the General Assembly, the Office of Legislative Workplace Relations shall provide training on the Workplace Expectations Policy and the Workplace Harassment Policy to newly elected members. The Office shall provide annual training on the policies to returning members of the General Assembly. THE OFFICE SHALL MAKE a list of any members who do not attend the annual training ~~shall be~~ publicly available. <{***grammatical change to use active voice.***}>

(3) Prior to or soon after the commencement of each regular session of the General Assembly, the Office shall provide voluntary training on the Policies to third parties, who are encouraged to attend such training.

(g) ***Definitions.*** As used in this Joint Rule 38:

(1) "Legislative employee" means:

(A) 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; or <{The exception clause for OSA employees who are not in the state personnel system is relocated to the definition provision so that it does not have to be repeated.}>

(B) ~~Any~~ A legislative aide to a member, A legislative intern, or A volunteer staff person.

(2) "Third ~~parties~~ PARTY" means ~~lobbyists, members~~ A LOBBYIST, MEMBER of the media, ~~and members~~ OR MEMBER of the general public who ~~have~~ HAS business at the state capitol or who ~~are~~ IS doing business with A legislative service ~~agencies~~ AGENCY, the Senate, or the House of Representatives. <{Recommend using the singular form of these nouns per standard drafting practice}>

2. House Rules

That in the Rules of the House of Representatives, Rule No. 25, **amend** (f.5)(3) as follows:

25. COMMITTEES

(f.5) (3) If the chair receives a complaint against a member of the House of Representatives or a partisan staff person of the House of Representatives under the Workplace Harassment Policy, the chair shall convene a meeting of the House Workplace Harassment Committee to consider the complaint and shall proceed in accordance with the Workplace Harassment Policy. Pursuant to the Workplace Harassment Policy and section 24-6-402 (3)(a)(III), Colorado Revised Statutes, meetings of the House Workplace Harassment Committee may occur in executive session. Additionally, pursuant to section 24-72-204 (3)(a)(X.5), Colorado Revised Statutes, all documents related to any complaint are confidential and are not subject to public inspection, **EXCEPT AS OTHERWISE PROVIDED IN SECTION 24-72-204 (9), COLORADO REVISED STATUTES, OR AS PERMITTED UNDER THE POLICIES.** <{Change related to SB23-286}>

3. Senate Rules

That in the Rules of the Senate, Rule No. 21, **amend** (g)(3) as follows:

21. COMMITTEES

- (g) (3) If the chair receives a complaint from the director of the office of legislative workplace relations that was filed against a member of the Senate or a partisan staff person of the Senate under the Workplace Harassment Policy, the chair shall convene a meeting of the Senate Workplace Harassment Committee to consider the complaint and shall proceed in accordance with the Workplace Harassment Policy. Pursuant to the Workplace Harassment Policy and section 24-6-402 (3)(a)(III), Colorado Revised Statutes, meetings of the Senate Workplace Harassment Committee may occur in executive session. Additionally, pursuant to section 24-72-204 (3)(a)(X.5), Colorado Revised Statutes, all documents related to any workplace harassment complaint are confidential and are not subject to public inspection, **EXCEPT AS OTHERWISE PROVIDED IN SECTION 24-72-204 (9), COLORADO REVISED STATUTES, OR AS PERMITTED UNDER THE POLICIES.** <{*Change related to SB23-286*}>