

# **Workplace Harassment Policy of the General Assembly**

Effective 9/5/19

## **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, color, religion, national origin, sex (including pregnancy, childbirth, and related medical conditions), ancestry, sexual orientation, age, 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 about an alleged violation of this Policy, assisted in such a complaint, or participated 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:

1. **Chamber leadership** for the House of Representatives means the Speaker and Majority and Minority Leaders of the House of Representatives and, for the Senate, means the President and Majority and Minority Leaders of the Senate.
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** 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.

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 Legislative Council Staff, the Office of Legislative Legal Services, 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.
7. **Nonpartisan staff** means an employee of Legislative Council Staff, the Office of Legislative Legal Services, 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.
8. **Nonpartisan supervisor** means: For nonpartisan employees of the Senate, the Secretary of the Senate; for nonpartisan employees of the House of Representatives, the Chief Clerk of the House of Representatives; for employees of Legislative Council Staff, the

Director of the Legislative Council Staff; for employees of the Office of Legislative Legal Services, the Director of the Office of Legislative Legal Services; for employees of the Joint Budget Committee, the Director of the Joint Budget Committee Staff; and for employees of the Office of the State Auditor, the State Auditor.

9. **Office of Legislative Workplace Relations (Office)** means the office created in section 2-3-511, C.R.S., which provides services to the legislative department related to employee relations, training, compliance, complaint resolution, and workplace culture.
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 of 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 participating in an investigation under this Policy. Retaliation can take many forms and can be work-related or not work-related.
14. a. **Sexual harassment** means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
  - 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:
  - i. 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 be positive or negative; or

- IV. Using sexual words or phrases;
  - ii. 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 hotel room; or
    - V. Displaying cartoons or sending e-mails, text messages, instant messages, or notes, any of which contain sexual pictures, words, or phrases; or
  - iii. Physical:
    - I. Kissing of a member, legislative employee, or third party, unless the 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.
- c. 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.

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 complaint investigation when the scope and criteria described in this Policy are met and only with the approval of the complainant.

#### 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, 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.
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. A complainant who chooses to go through the informal process may, at any point, move the complaint to the formal process in section H. of this Policy if the alleged behavior qualifies under this Policy.

## 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 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 any anti-retaliation plan. The required notification shall ordinarily occur, 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 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 reasonable period of time after receipt of the summary, any new factual evidence.
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 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. Violations 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 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 not, the Office may dismiss the complaint. Otherwise, the Office shall conduct a confidential, impartial investigation, or may hire a professional third-party investigator to do so, or 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, the Office shall provide an executive summary and recommend to the nonpartisan supervisor, or work with a third party's employer, to determine a range of any corrective action. The 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 the reasons to the Office in writing. The Office may advise the Executive Committee of the Legislative Council if, in its discretion, it finds the statement 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 not, the Committee may dismiss the complaint. Otherwise, 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 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 the reasons to the Committee in writing. The Committee may, without identifying a party other than the supervising member, make this document public if, in its discretion, it finds the statement 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 not, the Committee may dismiss the complaint. Otherwise, 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 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 the reasons to the Committee in writing. The Committee may, without identifying a party other than its chamber leadership, make this document public if, in its discretion, it finds the statement 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.
  - d. Complaints against employees of the Office go to the Director of the Office of Legislative Legal Services. The Director shall conduct a confidential, impartial investigation or may hire a professional third-party investigator to do so, at the Director's discretion. The Director shall make all findings and determinations relevant to this Policy and shall implement accountability measures, when applicable.
9. The Office or Committee, as applicable, shall strive to complete the formal resolution process within 90 calendar days.

## I. CONFIDENTIALITY

1. The Office shall keep confidential all information received 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.
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.
3. 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.
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.