

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

Effective 5/9/24

## **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 filing a complaint about an alleged violation of this Policy, assisting in such a complaint, or 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:

1. **Chamber leadership** means:
  - a. For the House of Representatives, the Speaker and Majority and Minority Leaders of the House of Representatives; and
  - b. For the Senate, 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 (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 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.
  - 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.
  - 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.
  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.
  8. **Nonpartisan supervisor** means:
    - a. For nonpartisan staff of the Senate, the Secretary of the Senate;
    - b. For nonpartisan staff of the House of Representatives, the Chief Clerk of the House of Representatives;
    - c. For nonpartisan staff of the Legislative Council Staff, the Director of the Legislative Council Staff;
    - d. For nonpartisan staff of the Office of Legislative Legal Services, the Director of the Office of Legislative Legal Services;

- e. For nonpartisan staff of the Joint Budget Committee, the Director of the Joint Budget Committee Staff; and
  - f. For nonpartisan staff 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., that 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 filed 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.
14. **Sexual harassment** means harassment that is sexual in nature. 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.
  - 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.

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.

- 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.

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.

#### 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.

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 described 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 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, resources, and any anti-retaliation plan. The required information will ordinarily 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 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, relevant factual information.

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 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, 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 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, the Office shall dismiss the complaint. If the complaint falls within the scope of this Policy, the Office shall ensure that a confidential, impartial investigation is conducted. The Office may conduct the investigation itself, may hire a professional third-party investigator to 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.
    - 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. The Office shall provide an executive summary and recommendations for a range of any corrective actions to the nonpartisan supervisor. In the case of a complaint against a third party other than a lobbyist, the Office shall work with the 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 to the Office, in writing, the reasons for the deviation. The Office may advise the Executive Committee of the Legislative Council if, in its discretion, it

finds the 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 shall dismiss the complaint. 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 recommendations for a range of corrective actions to the staff member's caucus leadership and the supervising member. 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 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 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, the Committee shall dismiss the complaint. 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 recommendations for a range of corrective actions, if appropriate, to the member's chamber leadership. 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 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 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:

- (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 hire a professional third-party investigator to conduct a confidential, impartial investigation. The 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.

## I. CONFIDENTIALITY

- 1. The Office shall keep confidential all information received and 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.
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 five years after the later of:
    - a. The date the Office made or received the record; or
    - b. The date of the final disposition of the complaint or a related action.
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, except as otherwise provided in section H.8.c.iv. and section I.1.f. of this Policy and Joint Rule 38.
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.