

Oregon State Capitol Workplace Harassment Work Group
Discussion Draft – Identification of Best Practices – September 27, 2018

Please note: This draft is intended to facilitate a discussion of best practices by documenting the Work Group's evolving consensus on specific issues. Members of the workgroup are encouraged to identify any issues that would benefit from discussion and members of the public are invited to [provide comment](#) on the proposals.

I. Prohibited conduct

Consensus: The policy should affirmatively promote a respectful workplace by prohibiting more conduct than the law requires.

Outstanding Issues: Define the scope of conduct subject to the policy with specificity.

II. The options

Consensus: The policy should include a formal complaint process and an informal reporting process. A complaint process is designed to trigger an investigation and a response. A reporting process is designed to notify the relevant authority for the purpose of observing patterns of behavior and taking non-investigatory steps to remedy training, culture, or climate. In extreme cases, a pattern of behavior could cause the relevant authority to take other action sua sponte.

Consensus: Confidential counseling, and assistance navigating either process, should be available to individuals who believe they have been subjected to workplace harassment and to individuals who believe they may be the subject of a complaint.

III. The office

Consensus: There should be multiple avenues for making formal complaints and informal reports. But all formal complaints and informal reports should be forwarded to a single office. The office should be responsible for:

- Conducting investigations and writing investigative reports.
- Making recommendations or decisions regarding interim safety measures.
- Providing confidential counseling, that includes:
 - An explanation of the formal complaint and informal reporting process.
 - Assistance navigating either process.

The office should be provided with as much independence as possible, including independent physical space. The officer should be hired by, and report to, a joint legislative committee, with an equal number of members appointed by each of the four caucuses.

Outstanding Issues: Should the office also be responsible for conducting outreach and training? Are there some tasks that this office should not perform (e.g. both counseling *and* investigating)?

Are there additional ways to promote independence? How is the confidentiality of counseling protected? (A state law may be required.)

IV. Informal reports

Consensus: The policy should encourage all persons to report conduct that may constitute harassment and must continue to require legislative supervisors to report. Third parties contracting with the Legislative Assembly should be incentivized to report conduct that may constitute harassment. Reports should be kept as confidential as possible, given the authority's responsibility to use the reports to prevent or correct harassment.

Outstanding Issues: What steps should be taken in response to a report or a pattern of reports? Should there be anonymous reports, for example, through a hotline? How is the failure to report penalized?

V. Formal complaints

Who may file a formal complaint?

Consensus: Any person who believes they have been subjected to workplace harassment, or believes they have witnessed workplace harassment that affects their own ability to participate equally in the environment, may file a formal complaint.

Outstanding issues: Does the institution have standing to initiate a formal complaint? What information is protected or disclosed by the institution during the formal complaint process?

Who may be subject to a formal complaint?

Consensus: Any person over whom the Legislative Assembly may exercise jurisdiction or impose a remedy.

Should there be time limitations?

Consensus: Time limitations should **either** be eliminated **or** extended to four years.

VI. Protecting reporters, complainants and respondents.

Consensus: The policy should:

- Provide the authority to separate the complainant and respondent.
- Recognize that the authority may involve law enforcement in severe situations.
- Provide appropriate interim remedial measures depending on the severity or egregiousness of the allegations, including temporary reassignment, alternative work

environments, paid and unpaid leave and the temporary removal of potentially offending individuals.

- Require a check-in with complainants and respondents on a regular basis.
- Provide as much privacy as possible, given the need to investigate and provide interim remedies.

Consensus: The policy should emphasize and explain protections against retaliation, provide a safe place to report or make a complaint about retaliation (in the same way as reporting or complaining about harassment), and indicate that the complainant or reporter will not become a target of the investigation. The policy should provide the contact information for outside entities such as the Equal Employment Opportunity Commission and the Bureau of Labor and Industries.

Consensus: The policy need not prohibit consensual relationships, but should retain provisions indicating that consent may be withdrawn and the challenges associated with consensual relationships should be addressed through training.

Consensus: The respondent should be provided with notice of the specific allegations of the complaint and an opportunity to respond to the allegations and provide witnesses, testimony and other evidence. This may have the effect of allowing the respondent to determine the identity of the complainant. Nonetheless, this is necessary to provide due process over what could lead to reputational damage, loss of professional status, or loss of other privileges for the respondent.

VII. Investigation

Consensus: The investigation should be completed within 90 days, though it may be extended with notice to the complainant and respondent that explains the justification for the extension. Both the complainant and respondent should be made aware of the investigative timelines and status of the investigation on a regular basis and upon request.

Consensus: Records of an ongoing investigation should be exempt from public records laws. The result of the investigation may not be, depending on the category of respondent.

Consensus: If the fact of a complaint has been made public, the results of the investigation should be made public via a public record or (in some cases) a public hearing.

Consensus: The investigator should keep information obtained during the investigation confidential. The policy should not prohibit individuals from discussing the investigation, but the investigator may request that individuals not discuss the investigation in order to protect its integrity.

Consensus: For non-partisan legislative employees, the investigator should find the facts and determine whether the facts constitute a violation of the policy.

Outstanding Issues: Are there other classes of respondents for whom the investigator should find the facts and determine whether the facts constitute a policy violation? If the investigator does not perform these functions, who should?

VIII. Remedies and Appeals

Consensus: Remedies may be imposed on non-partisan legislative employees, without a committee hearing.

Outstanding Issues: Are there other classes of respondents for whom a legislative committee hearing is unnecessary?

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