**Oregon State Capitol Workplace Harassment Work Group**
**Discussion Draft – Identification of Best Practices – October 12, 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 and inclusive work environment by prohibiting more conduct than the law requires. The policy should continue to apply to conduct that occurs in any setting, including electronic media, when the conduct creates a work environment that is intimidating, hostile or offensive. The policy should include examples of prohibited conduct, as well as examples of conduct that may not be prohibited but that are inadvisable.
**Outstanding Issues:** Convene the Best Practices subgroup to define the scope of conduct subject to the policy with specificity.

# II. The options

**Consensus:** The policy should include:

- A confidential reporting process. The confidential reporting process provides a mechanism for an individual who wishes to remain anonymous to report conduct that violates the policy. It also can include confidential "process counseling" for individuals who believe they may have been subjected to conduct that violates the workplace harassment policy and to individuals who believe they may be the subject of a complaint.
- A nonconfidential reporting process. Individuals who believe they may have been subjected to conduct that violates the workplace harassment policy may make a nonconfidential complaint to a supervisor or other legally responsible person, or to the equity office described below. Supervisors or other legally responsible people who receive nonconfidential reports must pass the reports along to the equity office.
- A nonconfidential complaint process. The formal complaint process is designed to trigger an investigation and a response from the equity office. The formal reporting process must be available to allow the institution to investigate possible policy violations in the absence of a formal complainant.

# III. The equity office

**Consensus:** All complaints and reports should be forwarded to the equity office. A supervisor or other legally responsible person must inform the equity office if they have reason to believe that harassment or discrimination may have occurred. This duty is triggered whenever an employee makes a complaint to a supervisor or other legally responsible person. It is also triggered when the supervisor or other legally responsible person receives information through direct observation, rumor, or otherwise, that the policy has been violated.

Human Resources (unlike supervisors) may exercise its discretion to determine whether reports it receives involve prohibited workplace harassment and discrimination or whether they involve other interpersonal concerns. If workplace harassment or discrimination is involved, Human Resources must forward the information to the equity office.

The equity office should have at least two employees, with duties as follows:

- Employee #1: Conducting investigations, writing investigative reports and making recommendations or decisions regarding interim safety measures.
- Employee #2: Conducting outreach and training and providing confidential process counseling to any individual that includes an explanation of the formal complaint and reporting processes.

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

To protect the integrity of the office, the office should be divided into two divisions. One division should be responsible for receiving confidential reports, providing confidential process counseling and conducting outreach and training proactively or in response to patterns of complaints or confidential reports. A second division should be responsible for conducting investigations, making recommendations or decisions regarding interim safety measures and writing investigative reports. This second division should not have access to confidential information in the possession of the first division.

The policy should encourage all individuals 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.

## IV. Confidential reports

Confidential reports are designed to encourage reporting by ensuring confidentiality to the greatest possible extent. In order to balance this confidentiality with the institution's need to provide a safe environment, the policy should protect all personally identifiable information while allowing the institution to access and utilize aggregate, non-personally identifiable data. This data will allow the institution to observe patterns of behavior, take non-investigatory steps to remedy training, culture or climate and take other necessary actions sua sponte.
There should be one exception: for cases when it is necessary to disclose a confidential report in order to prevent imminent physical harm to any individual.

**Outstanding Issues:** Convene the Best Practices subgroup to determine what form a state statute should take to promote confidential reporting and data collection, while protecting individuals from harm?

## V. Formal reports

**Consensus:** Legislative supervisors or other legally responsible persons should continue to be required to report conduct that may violate the policy. This form of reporting, which should also be available to non-supervisors, is not confidential and is designed to encourage investigations and remedial measures, in the absence of a named complainant. Legislative supervisors should make these reports to Human Resources, who will determine whether the report falls within the subject matter of the policy and forward the report, or otherwise address its contents, accordingly.

## VI. Formal complaints

### Who may file a formal complaint?

**Consensus:** Any individuals who believe they have been subjected to workplace harassment, or believe they have witnessed workplace harassment, may file a formal complaint. Formal complaints should be submitted under penalty of perjury.

**Outstanding issues:** Does the institution have standing to initiate a formal complaint? Is a statutory change necessary to authorize a declaration under penalty of perjury in this context?

### Who may be subject to a formal complaint?

**Consensus:** Any individual 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.

## VII. 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). 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:** In a formal complaint, 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.

**Outstanding issues:** Does the same rule obtain in a formal report naming an individual respondent?

## VIII. Investigation, Remedies and Appeals

**Consensus:** An investigation into a formal complaint 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:** Except for the contents of a formal complaint, records relating to an ongoing investigation should be exempt from disclosure under public records laws. At the conclusion of the investigation, and any disciplinary process, the results of the investigation and the investigative file should be subject to disclosure. Existing exemptions (e.g. medical records) should continue to apply. Workplace harassment reports that do not result in an investigation should be exempt from disclosure.

**Outstanding issues:** Should the records be exempt (i.e. where the institution retains the option of disclosing) or confidential (i.e. where it is prohibited from disclosing)?

**Consensus:** As a general rule, 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. The investigator may disclose the fact of the investigation and any relevant details to Human Resources. The investigator may disclose investigation details to

Human Resources, and the supervisor of the complainant or respondent, if the investigator determines that there is a legitimate need to disclose the information.

**Consensus:** For non-partisan legislative employees alleged to have engaged in conduct that violates the workplace harassment policy the investigator should find the facts and determine whether the facts constitute a violation of the policy. The supervising authority, in consultation with Human Resources, should impose any remedial measures. The employee should be given notice of the factual allegations, the proposed remedial measures and an opportunity to be heard.

**Consensus:** For members of the public alleged to have engaged in conduct that violates the workplace harassment policy, the investigator should determine the facts. The Legislative Administrator should determine whether those facts constitute a violation of the policy and any remedial measures.

**Outstanding Issues:** For nonpartisan employees and members of the public, who determines interim safety measures? Is there an appeal or name clearing hearing?