

Oregon State Capitol Workplace Harassment Work Group
Discussion Draft – Identification of Best Practices – October 23, 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 workplace harassment policy should affirmatively promote a respectful and inclusive work environment by prohibiting more conduct than the law requires it to prohibit. 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. [In process.]

II. Reporting harassment

Consensus: The workplace harassment 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 Human Resources, who will evaluate the reports and forward to the equity office if appropriate. The nonconfidential reporting process must be available to allow the institution to investigate possible policy violations in the absence of a formal complainant.
- A nonconfidential complaint process. The formal complaint process is designed to trigger an investigation and a response from the equity office.

Consensus: A supervisor or other legally responsible person must inform Human Resources 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. Supervisors should not attempt to determine whether the information relates to harassment or

not. If they have reason to believe the information could possibly be related to harassment, they should report it.

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.

Third parties contracting with the Legislative Assembly should be incentivized to report conduct that may constitute harassment to the equity office.

III. The equity office

Consensus: The legislature should establish and fund an equity office. A substantial majority of workgroup participants believe that the equity office should be a neutral and independent office comprised of professionals employed full time by the legislature. The workgroup did, however, have a **dissenting view** about the structure of the office. One workgroup member would prefer a model whereby the entirety of the investigative function is outsourced to one or more outside entities.

Consensus: The equity office should be provided with as much independence as possible, including independent physical space.

Consensus: The staff of the equity office should be hired by, and report to, a joint legislative committee, with an equal number of members appointed by each of the four caucuses. The office should submit a report to the joint legislative committee, and appear before the committee, annually. The annual report to the committee should include:

- A description of the activities of the office since the last report.
- Non-personally identifiable statistics that identify the number of confidential reports, formal reports and formal complaints made under the policy, as well as the number of investigations conducted.
- The results, or a summary of the results, of the most recent climate survey.

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

- Staff #1: Conducting investigations, writing investigative reports and making recommendations or decisions regarding interim safety measures. This person should not have access to confidential information in the possession of the second staff member.
- Staff #2: Conducting outreach and training, administering regular climate surveys, and providing confidential process counseling to any individual that includes an explanation of the formal complaint and reporting processes.

Both employees should be expressly authorized to outsource work (including investigations), when workload or other practical factors require. As described above, one member had a

dissenting view whereby the entirety of the investigative function is outsourced to one or more outside entities.

Consensus: The equity office should ultimately receive all reports of harassment, both confidential and nonconfidential. The equity office is empowered to investigate reports of harassment as appropriate.

IV. Confidential reports

Consensus: The non-investigatory half of the equity office should be empowered to receive confidential reports about workplace harassment. Confidential reports are designed to encourage reporting. The identity of confidential reporters may not be disclosed. Nor may confidential reports be used as the basis for any disciplinary action.

There should be one exception to the office's duty to provide confidentiality: for cases when it is necessary to disclose a confidential report in order to prevent imminent physical harm to any individual.

The equity office may access and use aggregate, non-personally identifiable data based on confidential reports. This data will allow the institution to observe patterns of behavior, take non-investigatory steps to remedy training, culture or climate, encourage reporters to come forward in a non-confidential way, and take other necessary actions.

Consensus: The equity office may informally reach out to respondents of confidential reports, if it is possible to do so without disclosing the identity of the reporter directly or indirectly. In such conversations, the equity office may provide formal or informal training or advice regarding expected standards of behavior. Due to due process concerns, no disciplinary action may result from a confidential report.

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. Non-confidential reports

Consensus: Human Resources should be empowered to receive non-confidential reports about potential workplace harassment.

If a legislative supervisor or other legally responsible person knows or reasonably should know about workplace harassment, the institution as a whole is also "on notice" and has a duty to take reasonable measures to stop the harassment. For this reason, legislative supervisors or other legally responsible persons should continue to be required to report conduct that may violate the policy to Human Resources. Non supervisors should be encouraged to make such reports. This form of reporting is not confidential.

Human Resources should determine whether the report is potentially a report of workplace harassment based on protected class, or whether it involves interpersonal difficulties or other matters. If the report is potentially a report of workplace harassment, Human Resources will forward the report to the equity office. If it is not, Human Resources should address the report.

VI. Complaints

Who may file a complaint?

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

The equity office should evaluate complaints to determine whether an investigation is necessary to determine if harassment occurred. If the office determines that an investigation is necessary, it should initiate an investigation promptly.

Principles of due process require investigations to be based on evidence which is provided to a respondent. For this reason, complaints may only be filed by individuals based on their own personal knowledge; that knowledge (and the complainant's sworn statement) is evidence. Neither the institution itself, nor the equity office, is an individual with personal knowledge; therefore, they do not have "standing" to initiate a complaint.

Who may be the respondent?

Consensus: Any individual over whom the Legislative Assembly has the power to impose a remedy may be the subject of a complaint. This includes but is not limited to legislators, legislative employees (partisan and nonpartisan), government contractors, and members of the public who visit the building.

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 have the following provisions regarding interim remedial measures:

- Empower the equity office to separate the complainant and respondent through "no contact" orders.
- Recognize that the equity office may involve law enforcement in severe situations.
- Empower the equity office (with the assistance of Human Resources) to require other 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.

Consensus: The policy should have the following provisions to protect complainants and respondents:

- Require the equity office investigator to check in with complainants and respondents on a regular basis or upon request.
- Require the equity office to provide as much privacy as possible, given the need to investigate and provide interim remedies.

Consensus: The policy should:

- Require legislative employees (including legislators) to attend training on the harassment policy, available methods of reporting, and supervisors' obligations to report violations. Such training should also address the challenges associated with consensual relationships in the workplace.
- Require legislative employees (including legislators) to attend training on their statutory obligation as mandatory reporters of child abuse.
- Retain provisions indicating that consent may be withdrawn.

Consensus: The policy should include and explain protections against retaliation. It should provide a safe place to report or make a complaint about retaliation, in the same way as reporting or complaining about harassment.

Consensus: 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 respondent in a complaint 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.

VIII. Investigation, Remedies and Appeals

Consensus: All investigations under the policy should be completed as soon as practicable. The investigation into a formal complaint and the submission of a final investigative report should generally be completed within 90 days. The equity office may extend the timeline for good cause by providing notice to the complainant and respondent and explaining 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 process, the results of the investigation and the investigative file should be subject to disclosure. Other existing exemptions (e.g. medical records or internal advisory communications) should continue to apply. Workplace harassment reports (confidential or nonconfidential) that do not result in an investigation should be exempt from disclosure.

Consensus: The investigator should keep information obtained during the investigation as confidential as possible given the need for a sufficient investigation. 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 or 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 respectful workplace policy, the investigator should find the facts and determine whether the facts constitute a violation of the policy. The equity office, in consultation with Human Resources and supervisors as necessary, 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. A final decision with respect to the imposition of remedial measures should be made within 14 days after the investigator completes the investigatory report.

Consensus: For members of the public alleged to have engaged in conduct that violates the respectful workplace policy, the investigator should determine the facts. The Legislative Administrator should determine whether those facts constitute a violation of the policy and should impose any remedial measures. The person should be given notice of the factual allegations, the proposed remedial measures and an opportunity to be heard. A final decision with respect to the imposition of remedial measures should be made within 30 days of receipt of the investigatory report.

Outstanding Issues: For nonpartisan employees and members of the public, who determines interim safety measures? Is there an appeal or name clearing hearing? Should lobbyists be treated in a manner identical to the public? Or should lobbyists be subject to specific regulations? If the latter, are there constitutional limitations?

IX. Interns, volunteers and pages

Consensus: The name and contact information of every intern, page and volunteer in the State Capitol should be provided to Human Resources via a standard form. Human Resources may develop a form that includes other required information.

The equity office should ensure that appropriate information and in-person training on the workplace harassment policy is provided to each intern, page and volunteer as soon as practicable. The equity office should proactively attempt to conduct exit interviews with interns, pages and volunteers. The equity office should consider expanding these interviews to all staff, perhaps beginning with legislative assistants. The equity office should build constructive relationships with universities and other institutions that regularly recommend legislative interns, volunteers or pages, for the purpose of reaching those interns, volunteers, or pages.