

NCSL: ELEMENTS OF A STRONG POLICY

Policy Elements

- A clear definition of “sexual harassment.”
- Examples of what behaviors are considered inappropriate in the workplace.
- A policy that applies to legislators and staff, as well as nonemployees, such as lobbyists and outside vendors.
- A diversity of contacts within the legislature to whom sexual harassment can be reported, allowing the complainant to bypass reporting to his or her direct supervisor.
- A clear statement prohibiting retaliation for the filing of any claim.
- A statement providing for confidentiality, to the extent possible, for all parties involved.
- Specific examples of potential discipline, if warranted.
- The possibility of involving parties outside the legislature to assist in the investigation, if it is warranted or requested.
- An appeal procedure.
- A statement informing the complainant that she or he can also file a complaint to the Equal Employment Opportunity Commission and/or the state’s Human Rights Commission.

[Legislative Sexual Harassment Training Resources](#)

CONTACT

[Jonathan Griffin, Center for Legislative Strengthening](#)

WHO MAY SUBMIT A COMPLAINT

Legislators, legislative employees and...

- “third party” defined to include “any elected official, or employee of the Executive or Judicial branches of state government, member of the media, lobbyist and member of the public.” [Wyoming](#)
- “non-employees” [Utah](#)
- “any person” including “members of the public, including lobbyists, advocates, and members of the press...” [Vermont](#)
- “...contractors, interns, pages, volunteers, lobbyists, and members of the general public during the period in which they...are doing legislative business...” [Georgia](#)
- “...the House does not have a clear policy allowing a witness...or a confidant to a potential complainant to report harassment.” [Massachusetts House Report](#)
- “You do not have to be the person being harassed to report harassment.” [Alaska](#)

Rule 27

Legislators and legislative employees, including interns and volunteers, but...

“If an appointing authority or supervisor has knowledge of harassing conduct, the appointing authority or supervisor shall report the conduct to the Human Resources Director or the Legislative Counsel.”

“Appointing authorities and supervisors shall report allegations of, or knowledge of, alleged harassing conduct to the Human Resources Director or the Legislative Counsel.”

WHO MAY BE SUBJECT TO A COMPLAINT

Separate procedures for complaints filed against legislators, legislative employees and third parties. [New Mexico](#)

“If a complaint made against a lobbyist pursuant to this Rule is substantiated, appropriate disciplinary action may be brought against the lobbyist which may include, without limitation, having his or her registration as a lobbyist suspended.” [Nevada](#)

Ethics Commission given authority “over allegations that an individual required to be registered under the Lobbyist Registration Act has committed an act of sexual harassment.” [Illinois](#)

“Conduct by visitors which violates this policy may result in restrictions, including but not limited to, prohibitions on unaccompanied movement within the Senate areas.” [Washington Senate](#)

If a third party is the subject of a complaint, the HR Officer “should bring the incident to the attention of the third party’s employer or the appropriate regulatory authority.” [Massachusetts House Report](#)

“All agreements with agents, contractors, and vendors shall also contain provisions prohibiting harassment consistent with this policy.” [Florida Senate](#)

Rule 27

Legislators and legislative employees, including interns and volunteers, but...

“An appointing authority or supervisor shall take appropriate action to prevent, promptly correct and report harassment includ[ing] conduct by a nonemployee located in the workplace such as a vendor or member of the public.”

RECEIPT OF A COMPLAINT

“...shall document receipt...by providing written acknowledgement to the person lodging the complaint...”

[Wyoming](#)

“If the complaint is not in writing, the contact person who receives the complaint shall create a written record describing the circumstances comprising the complaint.” [North Dakota](#)

“When a workplace harassment complaint is made, the offices of the President Pro Tempore, the Speaker, and the Director of Legislative Services shall create a personnel file under the complainant’s name, to be kept separately and apart from the main personnel file.” [Draft Idaho](#)

“In every case, the Human Resources Director shall provide the complainant with available resources for victims of workplace harassment and follow-up with the complainant, when appropriate, to ensure that the complainant was able to access available resources.” [Florida Senate](#)

“The individual responsible for the investigation shall keep the complainant and respondent advised of the status of the investigation, notify them when the investigation is complete and advise them of corrective action to be taken, if any.” [New Mexico](#)

WHEN AND WHERE THE RULE APPLIES

“outside of work during nonwork hours if it has consequences in the workplace.” [Alaska](#)

“whether in the State Capitol or another legislative setting” [New Mexico](#)

“interactions when in session and at all other times they are acting in their official capacity as a member or employee of the Legislature, including at interim committee meetings across the State and legislative conferences across the country.” [Wyoming](#)

“...in the Senate’s offices, at work assignments outside the office, or at office-sponsored social functions...” [New York Senate](#)

“(i) at the State House, (ii) in a district office, (iii) in the field, or (iv) at a meeting, district meeting, or conference...or otherwise within the scope of his or her employment.” [Massachusetts House Report](#)

“social media conduct and improper electronic communications that rise to the level of harassment...is prohibited at all times.” [Massachusetts House Report](#)

Rule 27

“...outside of work during nonworking hours if the conduct creates a work environment that a reasonable employee would find intimidating, hostile or offense.”

“...in the workplace and at events, professional meetings, seminars or any events at which legislative business is conducted.”

WHAT CONDUCT* IS SUBJECT TO THE RULE

“While based on state and federal law, this policy may cover behaviors which may not meet the legal definition of harassment but are considered unacceptable in the Legislature.” [Wisconsin Senate](#)

In addition to a [Workplace Harassment Policy](#), Alaska has adopted a [Professional Workplace Conduct Policy](#).

“If the conduct does not rise to the level of illegal behavior, [HR] will work with the parties involved to address the behavior.” [Alaska](#)

“Petty slights, annoyances, and isolated incidents (unless extremely serious) do not rise to the level of a violation.” [Georgia](#)

“Under the Constitution of New Mexico, legal action generally cannot be taken against members of the Legislature for their legislative acts. Harassment does not include conduct, such as heated discussions, pointed questioning and vigorous attempts to persuade, which is generally accepted as a regular and necessary part of the legislative process.” [New Mexico](#)

Rule 27

“...‘Workplace harassment’ includes discrimination based on a person’s protected status.”

“‘Workplace harassment’ does not include every minor annoyance or disappointment that an employee may encounter in the course of performing the employee’s job.”

NOTIFICATION – WHEN AND TO WHOM

“Upon receipt of a formal report involving a Legislator, the [Human Resources Manager] shall immediately inform the parties, including the appropriate manager or supervisor, the presiding officer and if the Legislator involved is a member of the minority caucus, the Minority Leader to ensure that the subject of the alleged harassment has a safe and nonhostile work environment.” [Alaska](#)

“The person...who received the formal complaint shall notify the Leader of the caucus to which the member alleged to have engaged in harassment belongs unless the member accuses of harassment is the Leader of the caucus. A copy of the complaint shall also be provided to the Speaker of the House unless the Speaker is the subject of the complaint. [Delaware House](#)

“Confidential reports brought by members or against members should remain confidential until the initial investigation conducted by the HR specialist is completed. Unless the reporting party requests notification of the presiding officers, confidentiality should be maintained until the resolution phase.” [Maryland Women’s Caucus Report](#)

Rule 27 – Formal Complaint

“...Employee Services or the Legislative Counsel shall immediately take appropriate action to ensure that the reporting party has a safe and nonhostile work environment.”

“...shall, within 10 days after receipt of the complaint, appoint an investigator...”

“The person alleged to be involved in the harassment shall be notified....”

Copy of formal complaint provided to:

- Highest ranking caucus member, if respondent is a legislator or partisan staff.
- Agency head, if respondent is employee of a legislative agency.
- Parliamentarian, if respondent is employee of parliamentarian.
- Presiding officers or caucus leader, if conflict.

NOTIFICATION – WHEN AND TO WHOM

“All managers or supervisors who receive an informal report shall submit the report on the designated form to the [Human Resources manager], who shall maintain a confidential record of all reports received.” [Alaska](#)

“Upon receipt of a written or oral complaint, the person notified shall immediately notify the human resources director...” [Maine](#)

“While we recommend designating multiple persons who can receive complaints, we also recommend that the recipient of a complaint be required to report it....Funneling all complaints to [a single point of contact] will ensure a thoroughly professional response and uniform handling of complaints and will allow for tracking any complaint patterns.” [Massachusetts House Report](#)

Rule 27 – Informal Report

“...Employee Services or the Legislative Counsel shall immediately take appropriate action to ensure that the reporting party has a safe and nonhostile work environment.”

”(b) If a party informally reports harassment and wishes the report to remain anonymous or wishes that no action be taken, the Human Resources Director or the Legislative Counsel shall determine appropriate action.

(c) In the case of an informal report of harassing conduct and with consent from the party making the report, Employee Services or the Legislative Counsel shall [notify the respondent’s supervisor/ranking legislator who shall notify respondent that a report has been made and the name of the reporting party], in addition to any steps taken under paragraph (b)....”

WHO INVESTIGATES

“The Legislative Counsel Bureau shall establish a reporting system which allows a person to submit a complaint of a violation of this Rule with or without identifying himself or herself.” [Nevada](#)

“The Department shall...establish and maintain a sexual harassment hotline....The hotline shall provide the means through which persons may anonymously report sexual harassment in both private and public places of employment.” [Illinois](#)

“Upon request, the Office of Attorney General shall investigate or direct the investigation of a complaint and provide a recommendation...with regard to findings and remedies.” [Draft Idaho](#)

If a formal report involving a Legislator, “an independent investigator may be hired at the direction of the [Human Resources Officer] or upon the recommendation of the presiding officer or Minority Leader at the request of either party involved.” [Alaska](#)

“The respective Chair will either appoint a sub-committee to investigate the complaint or hire an outside third-party.” [Georgia](#)

“The person lodging the complaint may specify their preference for an internal or outside investigation.” [Wyoming](#)

Rule 27

“In all instances in which the person alleged [in a formal complaint] to be involved in the harassment is a member of the Legislative Assembly, the investigator may not be an employee of the Legislative Branch and shall have experience conducting investigations of harassment. With respect to any other complaint, the persons who receive the complaint shall appoint an investigator who is an employee...or an investigator unaffiliated with the Legislative Branch with experience conducting investigations of harassment.”

WHO DETERMINES FACTS

Rule 27

“A panel made up of The Speaker, President Pro Tempore and the Director of Legislative Services or their designee may accept, reject, or modify the findings and recommendations of the Office of Attorney General.” [Draft Idaho](#)

“The complainant and the respondent may appeal...in which case an individual who is experienced in the investigation of harassment matters and was not involved in the initial investigation will review the investigation to determine if it is satisfactory or if further action is required. [New Mexico](#)

Sexual Harassment Prevention Panel “may hire independent counsel to serve as a nonvoting hearing officer.” [Vermont](#)

“Within five days...recipients may request modifications to the [investigator’s] findings of facts....Requests for modification may be granted at the discretion of Employee Services and the Office of the Legislative Counsel.”

“When a special committee on conduct receives an investigator’s final findings and recommendations report, the committee shall schedule a public hearing....At the hearing, the complainant and the alleged harasser, or their attorneys, may present documents or other evidence and may suggest witnesses. Only committee members may question or otherwise address witnesses.”

CORRECTIVE ACTION - GENERALLY

“Materials [produced by the Human Resources Officer] should include examples of a range of interim and remedial measures, to demonstrate the House’s ability to take actions commensurate with the severity of various infractions and violations. Finally, in order to identify patterns of behavior or repeated offenses, we recommend that the [Human Resources Officer] develop a system for tracking all complaints and the outcomes of investigations.” [Massachusetts House Report](#)

“Remedial actions will be proportional to the seriousness of the offense and may include a written reprimand, demotion or transfer, suspension without pay, termination, or any other appropriate sanction.” [Draft Texas House](#)

“Actions taken will be based on the individual circumstances of the situation and may include counseling, discipline, sanctions, termination or revocation.” [Georgia](#)

“For third parties, remedies may include an apology to the complainant, direction to stop the offensive conduct, oral warning, written warning, or referral of the complaint to appropriate law enforcement agencies.” [Draft Idaho Policy](#)

“Disciplinary action against a member of the public who is found to have violated this policy includes any appropriate action authorized by law, including a protective order, removal from or denying access to legislative buildings or activities and notifying the individual’s employer or clients.” [New Mexico](#)

“The type of disciplinary action taken will vary depending upon the severity of the conduct but shall be significant enough to deter recurrence....If the source of the disruptive behavior is a member of the public, corrective action to be taken may include barring the person from the premises, terminating business relationships with that individual, and/or prosecution of the person involved.” [Hawaii House](#)

CORRECTIVE ACTION - LEGISLATORS

Workgroup Charge (emphasis added)

“Review the Legislative Assembly’s legal ability to discipline members of the Legislative Assembly for misconduct. The review must include examining whether the Legislative Assembly may impose *intermediate measures* to ensure the safety of persons in the State Capitol, including measures that *restrict* the time, place and manner of a member’s *access* to the State Capitol or State Capitol facilities if the member is accused of misconduct.”

“Examine whether the Oregon State Constitution may or must be amended to facilitate the *timely* discipline of members for misconduct.”

Oregon Constitution

“Either house may punish its members for disorderly behavior, and may with the concurrence of two thirds, expel a member; but not a second time for the same cause.” Article IV, section 15.

“Each house when assembled, shall choose its own officers, judge of the election, qualifications, and returns of its own members; determine its own rules of proceeding, and sit upon its own adjournments...” Article IV, section 11.

CORRECTIVE ACTION - LEGISLATORS

“...the current structure limits the House’s ability to impose proportionate discipline against Members in many circumstances. Imposing reprimand, censure, removal from position...or expulsion... carries with it a solemn constitutional weight and exceptional public scrutiny...We believe that the lack of any other remedial measures by which the House may take steps to correct a Member’s behavior severely limits the House’s ability to impose proportionate discipline while simultaneously discouraging the filing of complaints....We believe this represents a missed opportunity whereby employment and personnel practices that have been shown to address harassment in a more traditional employment setting are not being utilized.”

[Massachusetts House Report](#)

“Corrective action for members may include written reprimand, mandatory increased anti-discrimination or sexual harassment training, reassignment of duties, loss of legislative responsibilities or assignments, censure, expulsion or other corrective action in accordance with rules of the Legislature, the Wyoming Constitution and Wyoming statutes. [Wyoming](#)

“As a general rule, remedies will be assessed proportionate to the seriousness of the violation. For members, this may include an apology to the complainant, direction to stop the offensive conduct, counseling or training, oral warning, written warning or referral to the ethics committee of the appropriate body.” [Draft Idaho Policy](#)

Rule 27

“The committee may recommend: (A) Reprimand; (B) Censure; (C) Expulsion; or (D) That the committee take no further action.”

“Any sanction considered by a chamber shall be adopted by the chamber only upon receiving at least a two-thirds majority vote in favor of adoption of the sanction.”

CONFIDENTIALITY

“In the case of a complaint against a staff person, [the Human Resources Officer] should be required to maintain confidentiality throughout his or her investigation and to implement all remedial actions and discipline short of termination confidentially; without sharing the identity of the complainant or the person against whom the complaint is made, or any other details of the complaint with any Member or employee [except as necessary for investigation, imposition of remedial measures and documentation of resolution].....In the case of a complaint against a Member, [the Human Resources Officer] should be required to maintain confidentiality by...recommending all remedial actions or discipline short of reprimand, censure, removal from position as a chair or other position of authority, or expulsion of a Member confidentially....Any Member or employee who breaches confidentiality should be subject to discipline.” [Massachusetts House Report](#)

”All individuals subject to this policy who learn of the identity of a victim or witness or of the details of a complaint in the course of an investigation are expected to maintain the confidentiality of this information, and the release of such information may violate the law and constitute a separate violation of this policy. [Draft Texas House](#)

“In all [informal resolution] cases, confidentiality will be adhered to at the request of the complainant until such time that the investigating supervisor deems it is necessary to escalate the complaint due to concerns of safety, employer liability, seriousness of charges or other relevant information.” [Wisconsin Senate](#)

Absent a waiver [by all parties to the complaint], any disclosure will be limited to only that which is necessary to investigate the complaint or report properly, to take corrective action or to report a potential violation of state or federal criminal law.” [Wyoming](#)

Rule 27

“...all members and employees involved in the investigation shall cooperate and keep information regarding the matter confidential.”

CONFIDENTIALITY

“A report or complaint of harassment and documents related to any investigation shall be maintained confidentially to the extent possible pursuant to applicable law, rule or policy, including the Inspection of Public Records Act. The expressed wishes of the person reporting or complaining will be considered in the context of the legal obligation to act on the allegations and the right of the respondent to obtain information.” [New Mexico](#)

“All reports, including informal, formal, draft, and final reports, are considered, and must be treated as confidential under Legislative Council Records Policy, except the appropriate Rules Committee may consider release of all or a portion of a final report involving a Legislator. A violation of this provision is a violation of this policy and may also result in an ethics violation.” [Alaska](#)

“Any record pertaining to a complaint or investigation of workplace harassment against public employees is an exempt record under [North Dakota statute] until the investigation is complete but no longer than 75 calendar days from the date the complaint was made. ...Some records...may constitute Legislative Council work product, which is not subject to disclosure...” [North Dakota](#)

“The personal identifying information of an alleged victim of sexual harassment will be kept confidential and exempt from public records requirements pursuant to [Florida statute], to the fullest extent allowed by law.” [Florida Senate](#)

“All records produced or acquired in accordance with this Procedure are not subject to the Public Records Act.” [Vermont](#)

“Any records of sexual harassment complaints and investigations maintained pursuant to [Colorado legislative rule] are not subject to public inspection....A person accused of sexual harassment may make records kept pursuant to this Policy available for public inspection in order to support the contention that an allegation of sexual harassment against that person is false.” [Colorado](#)

Rule 27

“...certain Legislative Branch records are subject to public records requests...”

TIME LIMITATIONS AND TIMING

Time limitations

“A complaint shall not be considered if it is submitted more than 180 days after the problem arose or after the complainant could reasonably be expected to have become aware of the problem.” [Connecticut](#)

One year limitation applicable to formal complaints.
[Delaware House](#)

Rule 27 – Time limitation

“A [legislator or legislative employee] may, within one year of the date of the harassment, initiate a formal complaint process...”

“A [legislator or legislative employee] may, within one year of the date of the harassment initiate an informal reporting process...”

Rule 27 – Timing

- Investigator appointed within 10 days of formal complaint. Investigation and draft findings of fact and recommendations completed within 60 days of appointment, unless an extension is granted.
- Parties are given five days to “request modifications to the findings of fact.” Final findings and recommendations distributed within 10 days.
- If referred to special committee on conduct, hearing must be set between 14 and 45 days after receipt of final findings and recommendations.
- Parties are given 10 days, with a 5-day response period, to request that the special committee on conduct review its recommendations. Committee required to report final recommendations 10 days after expiration of the response period.

FALSE COMPLAINTS AND CONSENSUAL RELATIONSHIPS

False Complaints

“A complaint of harassment or other information provided in support of the complaint that is found to be intentionally or recklessly dishonest or malicious will be deemed a violation of this policy.” [New Mexico](#)

“Complaints of workplace harassment found to be intentionally or recklessly dishonest or malicious will not be tolerated and shall be subject to discipline up to and including immediate terminations or other appropriate action.” [Florida Senate](#)

”Reporting a false complaint is a serious act. Therefore, if, after the investigation is complete, the investigator determines that any employee has knowingly made false accusations or provided false statements during the investigation, he or she may be subject to disciplinary action, up to and including termination.” [New York Senate](#)

“Complaints of workplace harassment that are not made in good faith may subject the complainant to those remedies outlined in [the harassment policy].” [Draft Idaho](#)

Consensual Relationships

“Sexual, romantic or intimate relationships between persons in a supervisor/subordinate relationship that appear to be voluntary and welcome may nonetheless constitute sexual harassment....Relationships between supervisors and subordinates are not allowed in the Senate. Supervisors involved in such relationships have the obligation to remove themselves from the consensual relationship.” [Wisconsin Senate](#)

“Because of student interns’ unique vulnerability within the workplace, the [Maryland General Assembly] should consult with the new Sexual Harassment specialist to design and adopt a policy based on best practices that prohibits sexual relationships between legislators and student interns....Relationships between members or staff and their direct reports (including interns) should also be prohibited.” [Maryland Women’s Caucus Report](#)