
BACKGROUND MEMORANDUM

TO: OREGON STATE CAPITOL WORKPLACE HARASSMENT WORK GROUP,
OREGON LAW COMMISSION

FROM: JOSH NASBE, STAFF

DATE: MAY 11, 2018

This memorandum is intended to provide background information on the individuals who work in and visit the State Capitol, as well as the Oregon Legislative Assembly's harassment policy.

I. People in the State Capitol

The Oregon State Capitol is a unique building; it serves as a work place for some, but the "People's House" for all. Part I of this memorandum identifies and classifies individuals who work in and visit the Capitol.

Legislators

The Oregon Legislative Assembly is comprised of 90 legislators; 60 members of the Oregon House of Representatives and 30 members of the Oregon Senate. Legislators are not "employed" in the traditional sense; they are elected¹ by the voters of their district to two-year and four-year terms, respectively. The circumstances in which a legislator may be removed from office are limited; in addition to death or resignation, a legislator may be recalled under Article II, section 18 of the Oregon Constitution or may be expelled under Article IV, section 15 of the Oregon Constitution.²

Partisan Staff

Current House and Senate rules grant the authority to appoint staff to each legislator, caucus office and presiding officer, subject to budgetary limitations. By rule, these staff members serve at the pleasure of the appointing legislator.

¹ During certain periods in the biennium when a timely election is impractical, legislative vacancies are filled by appointment.

² Although more attenuated, it is worth noting in this context that Article IV, section 11 of the Oregon Constitution authorizes the House and the Senate to be the "judge of the election, qualifications, and returns of its members" and grants each chamber the authority to "determine its own rules of proceeding."

Non-partisan staff

Non-partisan staff are employed by six statutory offices throughout the State Capitol: Legislative Administration, Legislative Commission on Indian Services, Legislative Counsel, Legislative Fiscal, Legislative Policy and Research and Legislative Revenue. Broadly speaking, these offices are similarly structured, with joint or dual legislative committees providing oversight and hiring a chief executive officer who is authorized to hire professional staff.

For example, ORS 173.710 establishes the Legislative Administration Committee and directs the Committee to select a Legislative Administrator “who shall serve at the pleasure of the committee and under its direction.” The Administrator is, subject to the approval of the Committee, authorized to employ staff to carry out the duties of the office. Currently, Legislative Administration is divided into five departments: Employee Services, Facility Services, Financial Services, Information Services and Visitor Services.

In a similar vein, the House and Senate each employ a parliamentarian. The Chief Clerk is elected by the full House and the Secretary of the Senate is elected by the full Senate. These parliamentarians are, in turn, directed to appoint a Sergeant at Arms and other employees in consultation with the Speaker of the House and the President of the Senate, respectively. In addition, the parliamentarians oversee the respective chamber’s honorary page program.

Non-legislative branch officials and employees

The State Capitol also houses a number of other elected officials and employees. The Governor, Secretary of State and State Treasurer maintain offices and employ staff who work in the building. Public and private sector lobbyists, many of whom are required to register with the Oregon Government Ethics Commission, are fixtures in the State Capitol during legislative sessions. Finally, multiple entities, vendors and contractors, including those that operate the cafeteria, are regularly employed to work in the Capitol.

Visitors

Numerous other individuals and organizations frequently utilize the State Capitol to discuss, participate in or observe the democratic process.

II. Oregon Legislative Assembly – Rule 27: Harassment-Free Workplace

The Oregon Legislative Assembly’s harassment policy is a component of branch-wide personnel rules that are incorporated by reference into the chamber rules of the Oregon House of Representatives and the Oregon Senate.³ Rule 27 applies to all legislators and legislative employees, including interns and volunteers, while imposing an affirmative obligation on legislative supervisors to prevent, correct and report harassment from any source. By its terms, the rule is “designed to provide members and employees with informal and formal options to correct harassing conduct before it rises to the level of severe or pervasive harassment or discrimination.” In addition to creating an informal reporting process and a formal complaint process, the rule requires that legislators and employees be made aware of the contents of the rule and, independent of either process, mandates investigation of instances of severe or pervasive harassment or discrimination based on a protected class.

Informal Reporting

The informal reporting process is designed for persons who “simply want particular conduct to stop, but may not want to go through a formal complaint process or legal proceeding.” Informal reports may be submitted through multiple channels and are ultimately provided to the Human Resources Director or the Legislative Counsel, who are charged with immediately taking action to ensure a safe and nonhostile work environment.

The informal reporting process seeks a balance between the institutional interest in ensuring a safe work environment with the express wishes of the person making the informal report. That is, the rule authorizes an investigation, but expressly contemplates that the reporting person may wish to remain anonymous, may wish that no action be taken and may not wish to notify the alleged harasser of the informal report – while vesting the ultimate responsibility to “determine appropriate action” in the Human Resources Director or the Legislative Counsel.

Formal Complaint

Absent a conflict, formal complaints must be submitted in writing to the Human Resources Director. In response, the Director or the Legislative Counsel is required to immediately take action to ensure a safe and nonhostile work environment and must appoint an investigator within 10 days. If the formal complaint alleges harassment by a legislator, the investigation must be referred to an experienced, outside investigator. At this stage, the person alleged to have engaged in harassment is notified that an investigation has begun and a copy of the formal complaint is provided to the person’s supervisor or, if the person is a legislator, partisan staff or the head of a legislative agency, to a ranking member of the caucus or a Presiding Officer.

Absent an extension granted by the Human Resources Director or the Legislative Counsel, the investigation must be completed within 60 days. The investigator’s draft findings of fact and recommendations are provided to the parties, who may request that the Director or the Legislative Counsel modify the draft findings of fact. Within 10 days, final findings of fact and recommendations must be provided to the parties and, if the person alleged to have engaged in harassment is an employee, to the employee’s supervisor, who must act on the recommendations as soon as possible.⁴

³[Legislative Branch Personnel Rule 27](#) (2016); [Senate Rule 18.01](#) (2017); [House Rule 2.03](#) (2018). Rule 27 is included on the National Council of State Legislatures’ Sexual Harassment Policy [webpage](#).

⁴ If the employee is terminated, subsection (11) of the rule provides for a post-termination hearing to assess whether the employee’s liberty interests were violated.

House and Senate Conduct Committees

If the person alleged to have engaged in harassment is a legislator, the investigator's final findings of fact and recommendations must be provided to the Conduct Committee of the applicable chamber and a public hearing must be scheduled between 14 and 45 days after receipt. At the hearing, the parties or their attorneys may submit evidence and may suggest witnesses, but only Committee members may question or otherwise address witnesses. Questions posed to witnesses by Committee members must be limited to "topics that a court in this state would deem relevant in a civil action involving the same conduct."

Ultimately, the Committee may recommend one of four outcomes: 1) Reprimand; 2) Censure; 3) Expulsion; and 4) No further action. The Committee's initial recommendation is provided to the parties who may, during a 10-day period, submit written objections and request reconsideration. The Committee is required to make a final recommendation no later than 20 days after the initial recommendation. The rule then requires the full chamber to take action on the recommendation the next day it convenes and imposes a two-thirds vote requirement for any sanction adopted.

Generally Applicable Provisions

Regardless of whether an informal report is made or a formal complaint is filed, a one-year time limitation applies, the report or complaint must include specific details and all legislators and employees are required to cooperate with the investigation. The rule expressly requires legislators and employees to keep information regarding the investigation confidential, while also noting that investigation-related records may be subject to disclosure under Oregon Public Records Law. Finally, the rule prohibits retaliating against any person who participates in the process and classifies retaliation as a form of harassment that is itself subject to the rule.