

What Legislators Should Do

If you are offended by jokes, comments, or other harassing conduct in your workplace, you should take the following steps as soon as possible:

* Make it known to the harasser in no uncertain terms that the behavior is unwelcome or report the incident to your immediate supervisor or any other supervisor not involved. Reinforce your efforts with a follow-up note and keep a copy as evidence.

* If the unwelcome behavior does not cease immediately, report the harassment to your party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader.

* Prepare and maintain written records of the dates, times, and facts of all harassment and record the names of all witnesses and any other victims of the harasser.

* Obtain copies of any written materials regarding the quality of your work to document a retaliatory, job-threatening action by a supervisor or co-worker.

* Document any physical or psychological problem resulting from the incident.

* Do not ignore the incident, resign your position, or believe that your agency will not consider your complaint to be serious.

If you are considering reporting a complaint, you can:

- use your agency's complaint resolution procedure (Joint Rule 10-85 for legislators);
- file a complaint with the Human Rights Bureau, Department of Labor and Industry (PO Box 1728, Helena, MT 59624-1728, phone 1-800-542-0807). Complaints with the Human Rights Bureau will be accepted within 180 days of the discriminatory act or extended up to 120 days if you file an internal complaint procedure.

If you are not personally a victim of discrimination but observe actions against other employees that you believe to be discrimination, you are encouraged to bring it to the attention of your HR or presiding officer.

Joint Rule 10-85. Harassment prohibited.

(1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee of the house of representatives or the senate, the violation must be reported to the employee's supervisor or, if the offender is the supervisor for the house of representatives or the senate, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a permanent legislative employee, the report should be made to the employee's supervisor or, if the offender is the supervisor, to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(4) If the offended party is a supervisor for the house of representatives or the senate, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor of permanent legislative employees, the violation must be reported to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee or supervisor, the employee or supervisor is subject to discipline or discharge.

From: Rules of the Montana Legislature, 65th Legislature, 2017.

A GUIDE FOR MONTANA LEGISLATORS



HARASSMENT

IS AGAINST

THE LAW

Legislative Branch
Financial and Human Resource
Office, Rm 155
Kelly DaSilva, Human Resource
Manager, 444-3230

Legislators Have a Right to Work in an Environment Free of Harassment

It is the policy of Montana state government as an employer:

- to provide state employees with a working environment free from discrimination and harassment;
- to communicate the state's Nondiscrimination-EEO program and reporting procedures to employees and supervisors;
- to recognize the unique nature of the complaints of sexual harassment and other forms of discriminatory harassment;
- to encourage early reporting by employees;
- to resolve complaints promptly, confidentially, and at the lowest management level possible;
- to prohibit retaliation against any employee who has made a report of alleged harassment or against any employee who has testified, assisted, or participated in any manner in investigating a report.

Sexual Harassment

The State of Montana prohibits sexual harassment of employees, customers, clients, and any other persons. Sexual harassment is a form of sex discrimination, and there are two types of sexual harassment:

Quid pro quo: Sexual favors are sought in return for job benefits or opportunities. This type includes being forced to resign (constructive discharge). **Examples:** Unwelcome sexual advances are a term or condition of employment; there is a loss or threatened loss of a job for failing to comply with a supervisor's sexual demands, including situations that began as mutual attractions but later ceased to be reciprocal; employment benefits affected in exchange for sexual favors (may include situations in which a third party is treated less favorably because others have agreed to sexual advances).

Hostile working environment: Unwelcome sexual conduct by an individual interferes with an employee's

job performance or creates an intimidating, hostile, or offensive working environment. The key words are **unwelcome, unreasonable, intimidating, hostile, and offensive**. **Examples:** Displaying sexually suggestive objects, pictures, cartoons, or posters; verbal abuse of a sexual nature; sexually oriented jokes, innuendoes, or obscenities; or sexually suggestive letters, notes, or invitations.

Harassment not involving sexual activity or language is also discriminatory if it is sufficiently patterned or pervasive and directed at employees because of their sex. This is **gender-based** harassment.

Other Harassment

The State of Montana's policy is to provide employees with a work environment free of these forms of harassment. Harassment of employees, clients, customers, and any other person doing business with state government because of a person's **race, color, national origin, age, physical or mental disability, marital status, religion, creed, sexual orientation, or political beliefs** is prohibited.

Examples of other prohibited harassment include but are not limited to: coercion of employees, clients, or customers in the participation or nonparticipation in religious activities; or ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed, sexual orientation, or political beliefs if these actions create an intimidating, hostile, or offensive working environment.

Agency Liability

Under federal and state discrimination law, agencies may be liable for monetary compensation and other forms of relief to employees who are victims of sexual harassment by:

- * supervisors, whether or not the agency knew of the sexual harassment;
- * co-workers and nonemployees when the agency knew or should have known of the sexual harassment in the workplace and failed to take immediate corrective action.

See the federal guidance on [Vicarious Employer Liability for Unlawful Harassment by Supervisors](http://www.eeoc.gov/policy/docs/harassment.html): <http://www.eeoc.gov/policy/docs/harassment.html>.

Personal Liability

A harasser may be personally liable for damages to the victim of sexual harassment. Montana state government does not cover an employee for damages or legal expenses when the employee has been found liable for sexual harassment. Moreover, a harasser's employment may be terminated.

What Leadership/Management Should Do

Prevention is the best method for eliminating harassment. The following steps will aid in preventing harassment:

- Make sure your agency's EEO policy statement and complaint resolution procedure are posted.
- Provide training for all employees on harassment prevention.
- Express strong disapproval of any harassing conduct in the workplace, including jokes, comments, gag gifts, and the posting of photos and written materials that may be offensive.
- Lead by example.
- Immediately investigate any report of harassment.
- Ensure that there is no retaliation after an employee reports harassment (retaliation is illegal).
- Take immediate, prompt, and effective corrective action upon determining that the harassment occurred.
- Encourage employees to report harassment immediately in accordance with your agency's policies.
- Inform employees of their right to report discrimination and harassment to the Montana Human Rights Bureau or the federal Equal Employment Opportunity Commission.

Adapted with permission from:
State Human Resources Division, DOA
Interagency Committee for Change by Women (ICCW)
Human Rights Bureau, DLI