

DRAFT - Policy of the Montana Legislature Prohibiting Discrimination and Harassment (for Legislators) – Subcommittee version II (5/8/18)

1. Policy and Objective

A. Right to be free of discrimination or harassment

It is the policy of the Legislative Branch that all participants in the legislative process have the right to be free from discrimination and harassment when participating in the legislative process, whether the offender is an employer, permanent division employee or session-only employee, page or intern, legislator, lobbyist, state officer or employee, or member of the public or the media. Federal law, [Title 49, chapter 2, MCA](#) (commonly referred to as the Montana Human Rights Act), and its implementing regulations prohibit discrimination on the basis of race, creed, color, culture, social origin, religion, sex, sexual orientation, age, pregnancy, disability, genetic information, gender identity or expression, marital status, military service or veteran status, citizenship, or any other characteristic protected by law.

It is the policy of the Legislative Branch to encourage prompt reporting of inappropriate behaviors, as provided in section 3, if a person is being subjected to discrimination or harassment by anyone participating in the legislative process. It is the policy of the Legislative Branch to investigate those reports. The Legislative Branch prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of those reports.

It is the policy of the Legislative Branch to ensure equal employment opportunity without discrimination or harassment on the basis of race, creed, color, culture, social origin, religion, sex, sexual orientation, age, pregnancy, disability, genetic information, gender identity or expression, marital status, military service or veteran status, citizenship, or any other characteristic protected by law. The Legislative Branch prohibits any such discrimination or harassment.

This policy applies to legislator members of the House and Senate of the Montana Legislature. In addition, this policy covers the interaction of and between legislators and others away from the legislative complex in communications and at legislative-sponsored events, professional meetings or seminars, and those activities that involve legislative business. Policies for conduct of permanent, temporary, short-term, and seasonal division employees, House and Senate session employees, and third parties are separate and may be obtained from the Legislative Services Division Human Resources Office.

Nothing in this policy precludes a person from seeking other legal remedies.

B. Discipline

It is the policy of the Montana Legislature to discipline a legislator for substantiated charges of discrimination or harassment of any person in connection with the legislative process.

[Disciplinary action of a legislator is covered under Section 5 of this policy.](#)

It is the policy of the Montana Legislature to take action with the appropriate authority for a third party, such as an employee, lobbyist, state agency employee, media, vendor or contractor, or member of the public that is reasonably calculated to prevent further harassment from occurring.

Disciplinary action of a legislative branch employee is covered under their respective policy. Employees of the executive or judicial branches will be referred to their immediate supervisor, manager, or director to deal with under their respective policies.

Disciplinary action against a member of the public, lobbyist, media, vendor, or contractor who is found to have violated this policy includes any appropriate action authorized by law.

Appropriate action may include notifying the individual's employer, principal, or clients, a protective order, temporary removal from or denying access to legislative buildings or activities, temporarily denying the alleged harasser access to the complainant's workspace, and if appropriate and desired by the complainant, providing additional protective services to the complainant or temporarily changing the complainant's work space or work assignment.

A record of each complaint and resolution shall be maintained by the Legislative Services Division Human Resources Office.

## 2. Definitions of harassment, retaliation

Harassment on the basis of any protected characteristic is strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, creed, color, culture, social origin, religion, sex, sexual orientation, age, pregnancy, disability, genetic information, gender identity or expression, marital status, military service or veteran status, citizenship, or any other characteristic protected by law or that of the individual's relatives, friends, or associates and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment, has the purpose or effect of unreasonably interfering with an individual's work performance, or otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes but is not limited to epithets, slurs, or negative stereotyping; threatening, intimidating, or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group and that is placed on walls or elsewhere on the employer's premises or circulated in the workplace.

Sexual harassment constitutes discrimination and is illegal under federal and state laws. For the purposes of this policy, sexual harassment may include unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a legislator when, for example:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of rank, privilege, or legislative assignment for a legislator;
- b. that conduct has the purpose or effect of unreasonably interfering with an individual legislator, staff, or third-party's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include but are not limited to unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess, or sexual deficiencies; leering, whistling, or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal, or visual conduct of a sexual nature.

Retaliation against an individual who in good faith complains or participates in an investigation about sexual or other unlawful harassment is a violation of this policy and is prohibited by state and federal law. Retaliation is a form of harassment and will be handled in the same manner as other forms of harassment.

### 3. Reporting and Inquiry or Investigation procedure

A person who believes that they have been the subject of any form of harassment or retaliation by a legislator or has witnessed a form of harassment or retaliation shall report the conduct, by filing a complaint either verbally or in writing, to one of the appropriate persons listed below:

- a. Senate President or Speaker of the House
- b. Senate Majority Leader or Minority Leader or House Majority Leader or Minority Leader;
- c. a Senate Majority or Minority Whip or House Majority or Minority Whip; or
- d. to the Legislative Services Division Human Resource Manager.

Note: If the alleged offender is a Legislative Branch employee, the report may be made to the employee's supervisor, director, or the Legislative Services Human Resource Manager. If the alleged offender is the director the employee should report the conduct to one of the legislators listed above or the Human Resource Manager. If the person alleged to have violated this policy is not a legislator or a legislative branch employee (e.g., a member of the public or the media, executive or judicial branch state employee, a lobbyist, or a vendor or contractor), the person making the complaint shall report it to the Legislative Services Human Resources Manager who will assist in determining to whom the appropriate person is to report.

A Discrimination Complaint Resolution Form is included as an Appendix to this policy. The person receiving the report shall contact the Legislative Services Division Human Resources Manager. It is ~~appropriate~~ required for a ~~majority or minority leader or whip~~ member of the leadership team who receives a complaint to inform their respective caucus leader of the complaint. The person making the complaint and any person receiving information regarding the complaint shall treat the information in strict confidence and shared only as provided in this policy until such time a conclusion is reached.

The Human Resources Manager shall document the complaint and contact the Leadership Panel consisting of the Senate President, Speaker of the House, the Senate Minority Leader, and the House Minority Leader. The Leadership Panel must convene within 3 business days to discuss the complaint and allegation and conduct a preliminary inquiry with the assistance of the Legislative Services Division Human Resource Manager and the Chief Legal Counsel. The preliminary inquiry may result in a determination whether:

1. the complaint is frivolous or deserves merit;
2. no action must be taken or an informal resolution may be made; or
3. the complaint requires additional investigation and whether a third-party investigation is necessary.

The procedure for investigation into a harassment report may include but is not limited to:

- a. securing a statement from the person reporting the harassment;

- b. holding individual interviews or group meetings;
- c. weighing the facts;
- d. applying pertinent laws, rules, policies, or practices to the facts surrounding the report of harassment.

If a third-party investigation from a person who is experienced in employment law and in the investigation of claims of harassment is desired, the Chief Legal Counsel or appropriate designee may procure assistance from persons outside the branch as needed.

The results of a third-party investigation must be provided to the Leadership Panel who will make a recommendation for appropriate corrective action to the appropriate authority as provided in Section 5.

Nothing in this procedure precludes an employee a complainant from requesting a member of the Leadership Panel, other legislative leader receiving the complaint, or the Human Resources Manager to first confer informally with the alleged offender to apprise the offender of the complaint and to gain assurance that the offensive conduct will be discontinued.

A person making a complaint may at any time file a complaint with the Montana Human Rights Commission as provided in Title 49, chapter 2, MCA. Montana Human Rights Bureau, 33 S. Last Chance Gulch, Suite 2, P.O. Box 1728, Helena, MT 59624, (406) 444-4356, (800) 542-0807, Montana Relay Service 711.

#### 4. Records and Confidentiality

[Additional research, analysis, and discussion needed regarding confidentiality. May want to refer to the Human Rights Commission or Executive Branch processes in rule for determining when information becomes public for the purposes of a public records request and how to determine what relates to a matter of individual privacy and whether the demands of individual privacy clearly exceed the merits of public disclosure for the various parties involved in a complaint.]

A record of each complaint and resolution shall be maintained by the Legislative Services Division. If the result of the preliminary inquiry or investigation is a finding that the charge of harassment is frivolous or is not substantiated, a copy of the finding must be placed in the confidential personnel human resources file in the Legislative Services Division Human Resources Office.

All information will be maintained on a confidential basis to the greatest extent possible. Only those who need to know in order to accomplish the purpose of the investigation shall be provided with the identity of the complainant and the allegations. All parties, including the complainant and the alleged harasser, contacted in the course of an investigation shall be advised of the necessity of confidentiality ~~and that any breach of confidentiality shall be treated as misconduct subject to disciplinary action.~~

Corrective action and confidentiality regarding members may be constitutionally limited with regard to formal discipline such as discipline, censure, or expulsion.

Except for records made public in the course of a hearing held under [appropriate reference needed] and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the leadership panel in connection with an investigation or

complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties until a decision is issued.

However, the complainant or person who is the subject of a complaint may waive, in writing, the right of confidentiality of their identifying information provided in this subsection. If a waiver is filed with the Legislative Services Division Human Resources Manager, the complaint and any related documents must be open for public inspection. The decision issued after investigation is a public record open to inspection.

#### 5. Findings, Discipline, and Corrective Action

After an investigation, a determination of the appropriate corrective action must be made. Corrective actions may include, but are not limited to those outlined below.

If the result of the inquiry is a finding that the charge of harassment is substantiated and the offender is a legislator, the person conducting the inquiry shall ensure that actions taken must be under the purview of the person or body imposing the sanction. The Leadership Panel shall make a recommendation to the appropriate person or to the [Rules- Ethics Committee].

If the offender would agree, the Leadership Panel may recommend corrective actions such as training, referral to counseling, disciplinary action, or denying access to complainant as determined to be appropriate under the circumstances. A report on the matter of compliance may also be considered a corrective action.

The Speaker or Committee on Committees may have authority to remove a legislator from a committee assignment or chair position.

If a mutual agreement is reached between the Leadership Panel and the legislator, the resolution must be documented and filed with the Legislative Services Division Human Resources office.

The Leadership Panel may refer the matter to the [Rules- Ethics Committee] of the applicable chamber, for determination whether the offending legislator is subject to discipline, censure, or expulsion, as appropriate.

The [Rules- Ethics Committee] shall hear the matter in accordance with its procedures and make a recommendation to the body. Formal charges require a hearing by the [Rules Committee] on the complaint and a formal vote ranging from no action as appropriate because no improper conduct occurred to a finding that improper conduct was found by clear and convincing [high legal standard] evidence as to warrant formal discipline. The member who is charged, shall be informed in writing by the committee chair of the presentation of the charge or charges in the committee report to the appropriate chamber and be given an opportunity to be heard in the member's own defense.

The appropriate chamber, by a majority vote, may dismiss the charge or charges without a hearing, or with notice and an opportunity to be heard in the member's own defense, censure a member or, upon a two-thirds vote of all the members of the appropriate chamber, discipline or expel a member.

## 6. Training

Participation in training on ~~sexual~~ harassment prevention will be mandatory for all legislators, presiding officers, permanent branch staff, and House and Senate staff, including pages and aides. Training will be offered on an annual basis for permanent staff and prior to or at the beginning of each regular legislative session. Training will include legal concepts underlying harassment law, expectations for the positive culture of the Legislative Branch, and discussion and examples of appropriate and inappropriate behaviors. Attendance will be taken and if a legislator or staff miss the mandatory training, an alternate training will be available and will need to be taken prior to taking any official actions.

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