

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1428

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1428
1/28/2015
22684

- Subcommittee
 Conference Committee

Donna Whetham

Explanation or reason for introduction of bill/resolution:

State employee harassment policies.

Minutes:

Attachments # 1-2.

Chairman Keiser: Opens the hearing on HB 1428.

Representative Boschee: District 44: Introduces HB 1428. (2:20- 3:35) (See Attachment #1).

Representative Laning: Most of those boards don't have employees at all do they?

Representative Boschee: A number of them do not, but there are a few that do. We want to make sure all employees have access to that policy.

Representative Ruby: Do we not have any provisions of harassment in our code at this time?

Representative Boschee: Legislative Council said it's been left up to the agencies to adopt rules such as this.

Representative Ruby: Why don't we have one agency wide policy that is uniform?

Representative Boschee: I wouldn't be opposed to that.

Chairman Keiser: When the board is appointed by the Governor those board members almost universally get paid when serving as a board. It is a statute for each board. Those boards have to live up to all the standards that we have. Even if you are assigned to a board such as the milk board and you are getting compensation, it is an official state agency basically and they would have to follow these guidelines as well?

Representative Boschee: I think I would have to defer that question to HRMS as far as the interpretation of government or legislative appointees if they are classified as employees or not.

Stuart Savelkoul: Assistant Director of North Dakota United : In support to HB 1428.(See Attachment # 2) .The big reason this bill is being introduced is because some of our members had questions on what is being done legislatively on harassment in the workplace. After going through the some of the policies that exist in HRMS and in ND code we found ND does a pretty good job regarding harassment in the work place. One loop hole that might exist is for some of the smaller agencies out there they don't have a policy specifically speaking to harassment. Sexual harassment it address in different areas so we are talking of other harassment. HRMS has a policy on that but those policies don't extend to all agencies. Why not have one policy and make it static for all? One reason is because we are sensitive to the fact that larger agencies might require more checks and balances and we didn't want to force each agency fall under a one size fits all approach. The way the bill is written the language is somewhat inverted from what its intent was and in its order. Our idea is agencies would follow HRMS unless they want to develop their own policy. This bill clarifies a path for what the employee ought to do if they feel they are a victim of bullying in the work place.

Representative Louser: As I look at the definition of harassment in North Dakota code is that what we are following or the redefine what is in code?

Stuart Savelkoul: I will redirect to Ken Purdy on this question. My assumption is their harassment policy does not conflict with century code.

Chairman Keiser: This says unlawful harassment. What is unlawful versus lawful harassment?

Stuart Savelkoul: I don't know.

Chairman Keiser: Any more support of HB 1428? None. Opposition to HB 1428? None. Is there any one in a neutral position?

Ken Purdy: Director of HR Management Services, OMB Human Services: I can try to clarify any questions.

Representative Louser: I read the policy to include such things such as calendars, jokes or photos but our definition of harassment in the state is a class A misdemeanor and seems a bit more extreme so I wonder if the definition is in conflict with each other?

Purdy: I'm not totally familiar with century code citation. In cases like this there might be two levels. A policy such as this just clarifies behavior in the workplace. What is harassment to some might be corrective behavior to others. It is very hard to draw a black and white line where that occurs.

Representative Ruby: If you do get complaints dealing with harassment , what do you rule on or when you determine someone is being inappropriate then what is the step?

Purdy: It comes down to case by case process. If it was sexual harassment it would trigger and investigation immediately. With the potential policy It would start internally

within the agency. Most of the time this type of harassment is dealt with within the agency. Our resources are available to the small agency.

Representative Ruby: Could you see some problems with Line 8, defining unlawful harassment and the testimony handed out says "can be verbal, nonverbal or physical contact". This is pretty broad and again unlawful doesn't necessarily mean illegal.

Purdy: I'm not sure about the language "unlawful" harassment. I am not sure how that would be interpreted. The top paragraph is generic and then refers to the issues of discrimination and sexual harassment. It involves working through and resolving work relationships.

Representative Frantsvog: What does HRMS stand for and is that an organization of the state?

Purdy: Human Resources Management Services and it is a division of Office Management and Budget.

Representative Frantsvog: If HB 1428 passes, will each agency have to rewrite their policy?

Purdy: Explains the process. HRMS provides the rules over all. It is fairly broad and we expect the agencies to provide detail that they need in their agency. We also develop policy for OMB and that is provided to the agencies as well.

Representative Frantsvog: Who would decide what they will use? Somebody has to decide.

Purdy: There is not a detailed procedure for approving agencies operating policies. We don't approve the agencies policies but we help develop them.

Representative Laning: Do you consider the various boards and commissions appointed to be state employees and secondly when you have a harassment problem with one of the board members, who oversees that?

Purdy: By statute, we have jurisdiction over agencies. The various boards do have employees and those are classified as our employees and they must follow our policies. In the case of a board member, that gets thorny and goes into the legal questions about their appointments. It probably would depend on the appointment for these positions.

Representative Kasper: Listening to what you said it appears to me what is unlawful in one agency may not be unlawful in another agency? Based on the terms of their own agencies policies?

Purdy: There is some variation. The whole issue in defining what unlawful harassment is very complex. An awkward correction by a supervisor of an employee might be taken by the employee as harassment. It is a judgment call. It's extremely complex to define.

Representative Kasper: We could have conflicting policies within the state agencies?

Purdy: If the issue is resolved at the agency level there could be different interpretations.

Chairman Keiser: Do you support that or would you prefer a standardized policy?

Purdy: It's a constant process in determining the appropriate central authority and the appropriate operating flexibility. That is the debate that is going on. With the diversity of our department agencies we have a huge variation in the policies that need to be applied.

Representative Louser: Has there been any harassment in an agency where there was not a policy and HMRS has declined to intervene?

Purdy: I can't think of a specific situation where we would have declined. Do we occasionally get calls from employees that really isn't anything that falls under administrative rules and we refer back to the agency.

Representative Louser: Would this bill make this process easier or change anything?

Purdy: It won't change very much.

Representative Amerman: Say the bill passes with the language unlawful. Then an agency says we won't stand for unlawful harassment. There has been a lot of concern is it lawful or unlawful? So the test really can only come if it is lawful or unlawful harassment when someone would say they were unlawfully harassed, does that make any sense?

Purdy: That does make sense. The interpretations come about via investigations and conclusions reached.

Chairman Keiser: I think what the intent was whether it's lawful or unlawful, that it is concerning harassment that is unacceptable in the work place. Would it make sense for your office to create a policy that says these behaviors are unacceptable and have the agencies add if they want to, but have those changes approved by your department. That would give us the flexibility and the standardization that this bill doesn't have built into it?

Purdy: At that point the difficulty comes in during the actual operation. It is very complex to draw that line about the definition. My concern is drawing that definition in code. That would certainly be your option.

Chairman Keiser: Any other neutral testimony on HB 1428. Closes the hearing on HB 1428.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1428
1/28/2015
22717

- Subcommittee
 Conference Committee

Donna Whetham

Explanation or reason for introduction of bill/resolution:

State employee harassment policies.

Minutes:

[Empty rectangular box]

Representative Boschee: Talking to the Labor commissioner. He worked the Attorney General's Office previously. The state Labor law was his portfolio. He shared with me that he would support this process because he found in that role in the Attorney General's Office that often agencies didn't have a process and that creates problems. They find times where people would make complaints and they wouldn't have anywhere to send them to refer to a policy or process. If we would strike the word "unlawful" it would help to not be referencing the criminal code as part of a HRMS policy.

Brian Johnson: The example was brought up if you have two agencies with similar situated employees so you have a secretary in each area but with two different policies in place. What happens in a discrimination case sometimes to prove your case you have to prove you were treated differently. If these two employees were treated differently you have created a prima facie case for a discrimination case. It is a potential problem with that.

Representative Boschee: In that case where we see a potential for conflict would a board or a court default to the HRMS policy?

Johnson: I might have to look at this further. Generally you would want similar policies. I understand a want and a need for different policies but when it comes to discrimination I think a one size fits all policy would be better.

Representative Boschee: I would agree, having one policy would be important. We already have HRMS rules that the agencies are supposed to have policies on the book and there is no enforcement on that. The executive branch doesn't want to get involved in the managing of these agencies.

Representative Ruby: It's not talking about discrimination as much as harassment. What one agency might require could be different from what another agency would require. I wouldn't necessarily be a discriminatory practice. It could be a harassment issue. That is where one size fits all doesn't work.

Johnson: As far as the harassment policy the discrimination comes when someone is disciplined under that policy. It is if they are disciplined and another employee wasn't under similar situations.

Chairman Keiser: It does seem that harassment is harassment. I can't define it, but as we do define it, the definition should be true for any state employee. I believe we should have a general policy and in those situations you need a different policy we should have the flexibility to go back and change the policy.

Representative Boschee: The labor commissioner referenced there is an administrative rule from HMRS requiring agencies such as this. The practice is there and it is an enforcement issue. He was supportive of this because it gave the agencies a process through HMRS's current policy.

Representative Louser: What brought this about?

Representative Boschee: A number of public employees have come forward to North Dakota United and talked in other areas. There has been a growing discussion of workplace bullying. The labor commissioner also referenced that as far as it is an expansion of harassment. Rather than talk about what is workplace bullying we wanted the state to have a policy in place.

Representative Frantsovog: What is North Dakota United?

Representative Boschee: It is the Public Employees Union. They merged with the Teachers Union. So it is all the teachers and public employees in the state.

Representative Laning: I don't see a lot of harm here. I move to delete the word "unlawful" on line 7 and 8 from HB 1428.

Representative Beadle: seconded.

Voice vote taken. All Ayes. Motion carried.

Representative Laning: Do Pass as Amended on HB 1428.

Representative Beadle: seconded.

A Roll Call Vote was taken. Yes: 13 No: 0 Absent: 2.

Representative Louser: will carry the bill.

15.0954.01001
Title.02000

Adopted by the Industry, Business and Labor
Committee

January 28, 2015

JK
1-28-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1428

Page 1, line 7, remove "unlawful"

Page 1, line 8, remove "unlawful"

Renumber accordingly

Date: Jan 28, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1428

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15-0954-01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider

Motion Made By Rep. Laning Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Voice Vote
Motion Carried

Total (Yes) No _____

Absent voice vote

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

line 7 & 8 delete "unlawful"
Motion carried.

Date: Jun 28, 2015

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1428

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0954.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider

Motion Made By Rep. Laning Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	Ab		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	x		Representative Hanson	x	
Representative Kasper	Ab		Representative M Nelson	y	
Representative Laning	x				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Louser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1428: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1428 was placed
on the Sixth order on the calendar.

Page 1, line 7, remove "unlawful"

Page 1, line 8, remove "unlawful"

Renumber accordingly

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1428

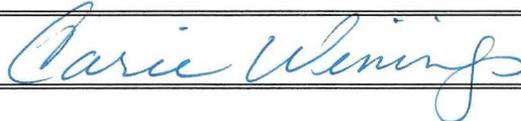
2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

HB 1428
3/26/2015
Job # 25472

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 54-06 of the North Dakota Century Code, relating to state employee harassment policies.

Minutes:

Attachments 1

Chairman Dever: Opened the hearing on HB 1428.

Representative Boschee, District 44: See Attachment #1 for testimony as sponsor and in support of the bill.

(1:35) Senator Flakoll: Is there any indication on how many there are working on this and how many may or may not? I am guessing all of the bigger ones do. Any indication of how many have to play catch up here?

Representative Boschee: I don't have that information. I think now on the Governor's website it is much easier to identify all of the boards and agencies but going through all of that would be quite the undertaking. The intention of the bill is that catch all and legislative management drafted it this way so that everyone had one and if they didn't they would fall under HR on this.

Senator Poolman: If we have all of these people working for the state and we have the North Dakota human resource management services division, why is not everyone following their policy? Is that not just assumed?

Representative Boschee: I thought that as well initially. Being kind of naive to the general operation of the state government in that capacity, many agencies and departments have unique functions and so therefore their human resources policies or needs may be unique compared to the next agency. They might have their own subsection or understanding of certain reporting and policies. We found that it is disjointed and in no way are we abdicating at this point that everyone operates the same. I think that would be ideal but that would be a big undertaking for HRMS as well as the rest of our state agencies.

Senator Poolman: Does sexual harassment look different in the insurance department than it does on the milk marketing board? I do not understand why that particular policy would need to be unique to each agency.

Representative Boschee: I would not disagree with that sentiment. I do not think that it looks different. From previous testimony on the House side, different agencies have different work environments and they have different situations where folks are traveling more or less and there are different situations that may come up and they may need to go further and expand certain aspects of their policy based on that.

Chairman Dever: Was the only amendment in the House to remove the word "unlawful" before harassment?

Representative Boschee: Yes. The committee felt that unlawful was a filler word. Anytime, harassment would be considered unlawful.

Senator Cook: Do you consider this to be proactive or reactive?

Representative Boschee: I consider it to be proactive. I do not know of any cases that I am reacting to.

Chairman Dever: My understanding is that some agencies have their own HR department and some are smaller and they go to HRMS for those services and that is the purpose of their existence.

Representative Boschee: That is my understanding as well.

(5:25) Stuart Savakol, Assistant Executive Director, North Dakota United: Testified in support of the bill. We desired to be proactive in our assistance in drafting this bill. The entire motivation for it was embodied in Senator Cook's question. It was a desire to be proactive. We know that workplace harassment and workplace bullying is getting a lot more attention today than it was 10 years ago even though it is not necessarily more prevalent. This bill was designed to make sure that state employees in North Dakota would always know that there was an avenue if they felt they were the victim of workplace harassment so that they knew to whom they should speak and what their options might be. There are folks out there right now - if you believed that you were being harassed at work and you take that issue to the labor commissioner's office, one of the first things they look at is if the workplace has a policy. If it does not it would look worse for the state and or agency. In many ways this a piece of legislation that removes some doubt and potential liability by the state. It gives employees a roadmap to satisfaction in the event that they feel harassed at work.

(8:00) Chairman Dever asked Ken Purdy, the Director of HR Management Services to answer some questions. How often do we have an issues dealing with this?

Ken Purdy: To my knowledge not often. There has been the occasional phone call asking about some behaviors. I think generally that is dealt with at the agency level. There is clear law and administrative code relating to sexual harassment and that is binding and in

effect on all agencies. This takes it a step further in the employment relationship into just harassment that does not have to be sexual in nature. I think in most cases agencies deal with that in the day to day management of their agencies. This gives a safety net if they drop the ball, or if they are ignoring a situation. That is where the idea that the needs and the functions in the various agencies are different. In terms of sexual harassment then standards are clear. In this case the work setting is probably going to make a difference in what is considered harassment and what is not. The difficult part that could come in is that to some extent that harassment is perception on the victim. That does not mean that we should ignore it. There are things we can do to try and work through those situations. This is proactive piece that enables someone to bring an issue to the surface to hopefully get it addressed.

Chairman Dever: If an employee feels that their agency has not dealt with a situation in a way that it should there is an appeal process to HR for this?

Ken Purdy: For certain things. It is complex. In order for us to enact a policy, it has to become an administrative rule and so it has to be adopted through the formal administrative agency practices act; which is public hearings, public notice, and so forth. When this is referring to OMB policies, we have a personnel policy manual within OMB and that is the direction for our managers and our employees within OMB. We publish that on the internet and we advise agencies that it is there to be used as a model for their operating policies. The twist here is that they are saying if an agency does not have its own internal policy then the OMB HRMS policy applies. We will have to sort out how we deal with that.

Chairman Dever: I would imagine that agency heads are supervisors if they need to they come to you and ask for your assistance.

Ken Purdy: All the time. They usually stop with us first because we don't charge back. The attorney costs in most cases.

Chairman Dever: Closed the hearing on HB 1428.

Senator Flakoll: Moved a Do Pass.

Senator Poolman: Seconded.

Chairman Dever: Discussion?

Senator Flakoll: As part of what I do, we have to annually complete harassment training and forms and the like. It is about being proactive to help identify what may be misbehaviors by individuals and I think that helps reduce the incidents of those situations. Those can be really messy lawsuits that are really tough to prove in many ways.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Flakoll will carry the bill.

Date: 3/26
Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1428**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Flakoll Seconded By Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	✓	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook	✓				
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Flakoll

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1428, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1428 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1428

Good morning Chairman Keiser and members of the committee. For the record, my name is Josh Boschee and I have the privilege of representing District 44 in north Fargo.

HB 1428 is a bill to create a new section to chapter 54-06 of the Century Code in order to ensure all state employees have access to a policy and process as it relates to employee harassment, including sexual harassment.

The intent of the legislation is to have each state agency, department and institution to adopt and enforce a policy on employee harassment. Lines 10-12 is the catch-all of the legislation that if an agency, department or institution does not have an independent policy, they will default to the policy found under ND Human Resource Management Services division of OMB.

With over 100 agencies, boards and commissions that have employees, many of the boards and commissions have less than five employees. These smaller organizations in our state government usually don't have formal policies to address harassment. For instance the Milk Marketing Board, does not have its own policy related to employee harassment.

Chairmen Keiser and members of the committee, I think this is a good piece of legislation that ensure all our state employees have access to a process in the event that they experience harassment in the workplace.

I stand for any questions.

- g. Human Rights (Discrimination) (N.D.C.C. ch. 14-02.4)
- h. Equal Pay for Men and Women (N.D.C.C. ch. 34-06.1)
- i. Age of Employee, Discharge or Refusal to Hire (N.D.C.C. § 34-01-17)
- j. Genetic Information Nondiscrimination Act (Federal 2008, GINA)

For specific details on these laws and corresponding guidelines, employees are encouraged to review the related laws and administrative rules.

Section 2. Harassment Policy

Conduct that unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment constitutes unlawful harassment. Unlawful harassment can be verbal, non-verbal, or physical conduct or communication that shows hostility or aversion towards an individual because of race, color, religion, sex, age, genetics, national origin, disability or other protected status. Examples may include, but are not limited to: epithets, slurs, jokes, negative stereotyping, written or graphic materials, pin-ups, posters, calendars, photographs, cartoons.

Any employee who engages in conduct that is illegal or inappropriate in view of this policy will be subject to disciplinary action up to and including termination of employment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct or communication of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment.
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

In addition, employees have the right to be free of harassment within the workplace from nonemployees such as customers or other individuals who provide services to or within OMB. Therefore, an employee may discontinue service or a telephone call in a situation in which a nonemployee is being abusive or harassing, including situations subjecting the employee to conduct, communication, or sexually explicit material which interferes with the employee's work performance or creates a hostile, intimidating, or offensive work environment. If this happens, the employee must immediately report the incident and the action taken to the immediate supervisor, and a record of the reason services were interrupted must be documented.

Sexual harassment may include a range of behaviors and may involve individuals of the same or different gender. These behaviors may include but are not limited to:

- a. Unwanted sexual advances or requests for sexual favors.

- b. Sexual jokes and innuendo.
- c. Verbal abuse of a sexual nature.
- d. Leering, massaging, or touching.
- e. Comments about a person's body, sexual prowess, or sexual deficiencies.
- f. Displaying or showing inappropriate sexually suggestive or offensive pictures or objects anywhere in the workplace.
- g. Degrading e-mail.

Early reporting and intervention are critical and have proven to be the most effective method of resolving actual or perceived incidents of harassment.

Employee Responsibilities

All employees are required to prevent sexual/unlawful harassment in the workplace. Employees must immediately report any perceived incidents of harassment or retaliation regardless of the person's position or identity, including customers, contractors, or other nonemployees. If an employee observes or experiences offensive conduct in the workplace or at any location, activity or event associated with OMB, the employee may promptly advise the offender directly that the conduct is unwelcome and offensive and request the conduct be stopped. If the employee has confronted the offender and the offensive conduct has not stopped, or the employee feels uncomfortable confronting the offender, the employee must notify the supervisor, the division director, the OMB director, or HRMS, who will then initiate appropriate action. Grievances of subsequent action or inaction may be pursued as provided for in OMB's Grievance policy, Chapter 14 of this manual.

Supervisor/Manager Responsibilities

Supervisors and managers are responsible to make every effort to prevent sexual/unlawful harassment in their respective work areas. Supervisors and managers must take immediate action to deal effectively with harassment or inappropriate behavior once such behavior has been brought to the manager's or supervisor's attention. This includes documenting the incident, reporting it to the division director, and initiating a workplace investigation when directed. HRMS is available to provide technical assistance to managers and supervisors on conducting workplace investigations. Incidents must also be reported to the Risk Management Division of OMB.

If the alleged harasser is a division director, the OMB director must be notified. If the alleged harasser is an appointed or elected official, the supervisor must notify HRMS or the Governor's Chief of Staff who will take appropriate action. Failure to report incidents of sexual/unlawful harassment will subject the manager/supervisor to disciplinary action up to and including termination of employment.

Division Director Responsibilities

Division directors will make every effort to prevent sexual/unlawful harassment in their respective divisions. Division directors will take immediate action to resolve allegations of harassment or inappropriate behavior, which may include but may not be limited to initiating a workplace

investigation, consulting with HRMS and legal staff, and taking appropriate corrective and disciplinary action. Division directors must also see that the incident is reported to the Risk Management Division of OMB.

OMB will investigate complaints of harassment or inappropriate behavior in a timely, thorough, and discreet manner and will take appropriate corrective and disciplinary action.

An employee who is found to have intentionally made a false report of harassment or who fails to cooperate in the investigation of a complaint will be subject to disciplinary action up to and including termination of employment.

Section 3. Americans With Disabilities Act (ADA and ADAAA)

The policy of OMB is to ensure complete compliance with the ADA and Amendments and provide reasonable accommodations to the known physical and mental limitations of a qualified applicant or employee with a disability. A qualified individual, as defined by the ADA Amendments Act of 2008, is an individual who, with or without accommodation, can perform the essential functions of the employment position that the individual holds or desires.

Managers shall identify the essential functions and physical/mental demands of a position before beginning any recruiting effort. The director of OMB has the final decision whether a request for an accommodation poses an undue hardship.

Any employee or applicant who feels discriminated against because of a disability should file a grievance in accordance with Chapter 14 of this manual.

Informal Discussion to Identify Reasonable Accommodation

If an applicant requests an accommodation to participate in the application and/or interview process, the supervisor shall discuss with the applicant an appropriate accommodation. The supervisor and the division director will determine the feasibility of the requested accommodation and provide an effective accommodation that would not be an undue hardship.

If a qualified OMB employee with a disability identifies the need for an accommodation, the supervisor should make a reasonable attempt to provide an accommodation that will give the employee an equally effective opportunity to perform the job's essential functions and enjoy equal benefits and privileges. The employee often is in the best position to suggest an appropriate accommodation, since the employee is generally most familiar with his or her own disability, the limitations it presents, and the best way to adjust the job and/or environment. When an appropriate accommodation is needed, the supervisor and individual should engage in what the EEOC calls an "informal interactive process" to determine what would be a reasonable accommodation. This process involves talking to the employee with the disability about the person's particular abilities and limitations as they pertain to a job's essential functions, or the privilege or benefit at issue. The informal discussion should identify the barriers to performance or participation in the benefit or privilege and should include discussion regarding how an accommodation might overcome these barriers. The employee with a disability should be encouraged to not only discuss the limitations involved, but also discuss the employee's own recommendations for accommodations.

2
HB 1428
1-28-15

- g. Human Rights (Discrimination) (N.D.C.C. ch. 14-02.4)
- h. Equal Pay for Men and Women (N.D.C.C. ch. 34-06.1)
- i. Age of Employee, Discharge or Refusal to Hire (N.D.C.C. § 34-01-17)
- j. Genetic Information Nondiscrimination Act (Federal 2008, GINA)

For specific details on these laws and corresponding guidelines, employees are encouraged to review the related laws and administrative rules.

Section 2. Harassment Policy

Conduct that unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment constitutes unlawful harassment. Unlawful harassment can be verbal, non-verbal, or physical conduct or communication that shows hostility or aversion towards an individual because of race, color, religion, sex, age, genetics, national origin, disability or other protected status. Examples may include, but are not limited to: epithets, slurs, jokes, negative stereotyping, written or graphic materials, pin-ups, posters, calendars, photographs, cartoons.

Any employee who engages in conduct that is illegal or inappropriate in view of this policy will be subject to disciplinary action up to and including termination of employment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct or communication of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment.
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

In addition, employees have the right to be free of harassment within the workplace from nonemployees such as customers or other individuals who provide services to or within OMB. Therefore, an employee may discontinue service or a telephone call in a situation in which a nonemployee is being abusive or harassing, including situations subjecting the employee to conduct, communication, or sexually explicit material which interferes with the employee's work performance or creates a hostile, intimidating, or offensive work environment. If this happens, the employee must immediately report the incident and the action taken to the immediate supervisor, and a record of the reason services were interrupted must be documented.

Sexual harassment may include a range of behaviors and may involve individuals of the same or different gender. These behaviors may include but are not limited to:

- a. Unwanted sexual advances or requests for sexual favors.

- b. Sexual jokes and innuendo.
- c. Verbal abuse of a sexual nature.
- d. Leering, massaging, or touching.
- e. Comments about a person's body, sexual prowess, or sexual deficiencies.
- f. Displaying or showing inappropriate sexually suggestive or offensive pictures or objects anywhere in the workplace.
- g. Degrading e-mail.

Early reporting and intervention are critical and have proven to be the most effective method of resolving actual or perceived incidents of harassment.

Employee Responsibilities

All employees are required to prevent sexual/unlawful harassment in the workplace. Employees must immediately report any perceived incidents of harassment or retaliation regardless of the person's position or identity, including customers, contractors, or other nonemployees. If an employee observes or experiences offensive conduct in the workplace or at any location, activity or event associated with OMB, the employee may promptly advise the offender directly that the conduct is unwelcome and offensive and request the conduct be stopped. If the employee has confronted the offender and the offensive conduct has not stopped, or the employee feels uncomfortable confronting the offender, the employee must notify the supervisor, the division director, the OMB director, or HRMS, who will then initiate appropriate action. Grievances of subsequent action or inaction may be pursued as provided for in OMB's Grievance policy, Chapter 14 of this manual.

Supervisor/Manager Responsibilities

Supervisors and managers are responsible to make every effort to prevent sexual/unlawful harassment in their respective work areas. Supervisors and managers must take immediate action to deal effectively with harassment or inappropriate behavior once such behavior has been brought to the manager's or supervisor's attention. This includes documenting the incident, reporting it to the division director, and initiating a workplace investigation when directed. HRMS is available to provide technical assistance to managers and supervisors on conducting workplace investigations. Incidents must also be reported to the Risk Management Division of OMB.

If the alleged harasser is a division director, the OMB director must be notified. If the alleged harasser is an appointed or elected official, the supervisor must notify HRMS or the Governor's Chief of Staff who will take appropriate action. Failure to report incidents of sexual/unlawful harassment will subject the manager/supervisor to disciplinary action up to and including termination of employment.

Division Director Responsibilities

Division directors will make every effort to prevent sexual/unlawful harassment in their respective divisions. Division directors will take immediate action to resolve allegations of harassment or inappropriate behavior, which may include but may not be limited to initiating a workplace

investigation, consulting with HRMS and legal staff, and taking appropriate corrective and disciplinary action. Division directors must also see that the incident is reported to the Risk Management Division of OMB.

OMB will investigate complaints of harassment or inappropriate behavior in a timely, thorough, and discreet manner and will take appropriate corrective and disciplinary action.

An employee who is found to have intentionally made a false report of harassment or who fails to cooperate in the investigation of a complaint will be subject to disciplinary action up to and including termination of employment.

Section 3. Americans With Disabilities Act (ADA and ADAAA)

The policy of OMB is to ensure complete compliance with the ADA and Amendments and provide reasonable accommodations to the known physical and mental limitations of a qualified applicant or employee with a disability. A qualified individual, as defined by the ADA Amendments Act of 2008, is an individual who, with or without accommodation, can perform the essential functions of the employment position that the individual holds or desires.

Managers shall identify the essential functions and physical/mental demands of a position before beginning any recruiting effort. The director of OMB has the final decision whether a request for an accommodation poses an undue hardship.

Any employee or applicant who feels discriminated against because of a disability should file a grievance in accordance with Chapter 14 of this manual.

Informal Discussion to Identify Reasonable Accommodation

If an applicant requests an accommodation to participate in the application and/or interview process, the supervisor shall discuss with the applicant an appropriate accommodation. The supervisor and the division director will determine the feasibility of the requested accommodation and provide an effective accommodation that would not be an undue hardship.

If a qualified OMB employee with a disability identifies the need for an accommodation, the supervisor should make a reasonable attempt to provide an accommodation that will give the employee an equally effective opportunity to perform the job's essential functions and enjoy equal benefits and privileges. The employee often is in the best position to suggest an appropriate accommodation, since the employee is generally most familiar with his or her own disability, the limitations it presents, and the best way to adjust the job and/or environment. When an appropriate accommodation is needed, the supervisor and individual should engage in what the EEOC calls an "informal interactive process" to determine what would be a reasonable accommodation. This process involves talking to the employee with the disability about the person's particular abilities and limitations as they pertain to a job's essential functions, or the privilege or benefit at issue. The informal discussion should identify the barriers to performance or participation in the benefit or privilege and should include discussion regarding how an accommodation might overcome these barriers. The employee with a disability should be encouraged to not only discuss the limitations involved, but also discuss the employee's own recommendations for accommodations.

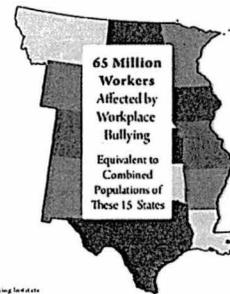
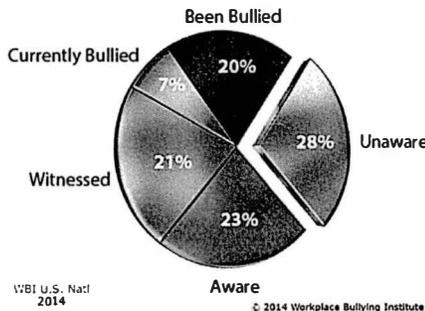
PSYCHOLOGICAL VIOLENCE • EMOTIONAL ABUSE AT WORK • MOBBING

Workplace Bullying remains an American epidemic. In the absence of legal prohibitions against it, employers are failing to take responsibility for its prevention and correction. Bullied individuals pay dearly with the loss of their economic livelihood to stop it.

PREVALENCE

Workplace Bullying was defined as repeated mistreatment; abusive conduct that is: threatening, humiliating, or intimidating, work sabotage, or verbal abuse.

This definition is the one used in the Healthy Workplace Bill. Bullying is “abusive conduct,” referring to its most serious forms only. By comparison with the rate of any disease or malady, bullying is an epidemic.

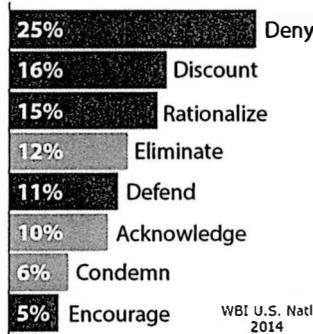


The number of U.S. workers who are affected by bullying – summing over those with direct bullying and witnessing experiences – is 65.6 million, the combined population of 15 states.

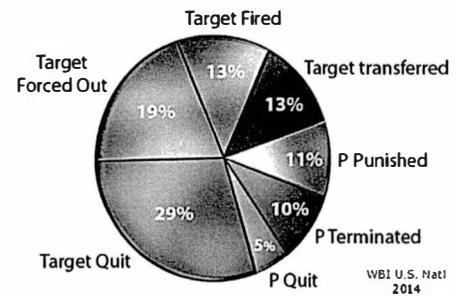
EMPLOYERS

Employers fail to appropriately react to abusive conduct much more frequently than they take positive steps ameliorate bullying. Denial and discounting were the most common reactions by employers.

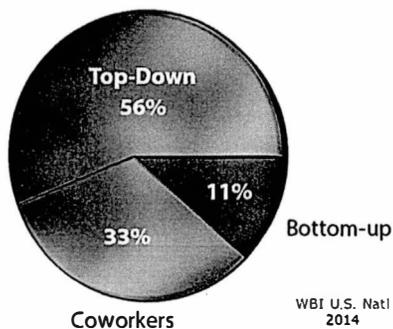
This led to 61% of the targets losing their jobs as the only way to stop the bullying.



WHAT STOPS IT



BULLY'S RANK



KEY FINDINGS

- 27% have current or past direct experience with abusive conduct at work
- 72% of the American public are aware of workplace bullying
- Bosses are still the majority of bullies
- 72% of employers deny, discount, encourage, rationalize, or defend it
- 93% of respondents support enactment of the Healthy Workplace Bill

SUPPORT FOR HWB



HEALTHY WORKPLACE Bill

healthyworkplacebill.org

Gary Namie, PhD, Research Director
Workplace Bullying Institute
National Office: 360.656.6630

WORKPLACEBULLYING.ORG

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Testimony for HB 1428 - House Industry, Business and Labor Committee

March 26, 2015

Rep. Joshua A. Boschee, District 44

Good morning Chairman Dever and members of the committee. For the record, my name is Josh Boschee and I have the privilege of representing District 44 in north Fargo.

HB 1428 is a bill to create a new section to chapter 54-06 of the Century Code in order to ensure all state employees have access to a policy and process as it relates to employee harassment, including sexual harassment.

The intent of the legislation is to have each state agency, department and institution to adopt and enforce a policy on employee harassment. Lines 10-12 is the catch-all of the legislation that if an agency, department or institution does not have an independent policy, they will default to the policy found under ND Human Resource Management Services division of OMB.

With over 100 agencies, boards and commissions that have employees, many of the boards and commissions have less than five employees. These smaller organizations in our state government usually don't have formal policies to address harassment. For instance the Milk Marketing Board, does not have its own policy related to employee harassment.

Chairman Dever and members of the committee, I think this is a good piece of legislation that ensures all of our state employees have access to a process in the event that they experience harassment in the workplace.

I stand for any questions.