# NORTH DAKOTA LEGISLATIVE ASSEMBLY
# POLICY AGAINST WORKPLACE HARASSMENT

## WORKPLACE HARASSMENT STATEMENT

Pursuant to Joint Rule 901, it is the policy of the Legislative Assembly to create and maintain an environment in which all members of the Legislative Assembly, legislative employees, and third parties are treated with dignity and respect. Legislators, legislative employees, and third parties have the right to an environment free from workplace harassment, both subtle and overt. The Legislative Assembly strives to eliminate all workplace harassment that legislators, legislative employees, and third parties may encounter. In furtherance of Joint Rule 901, this is the workplace harassment policy of the Legislative Assembly.

## APPLICABILITY

This policy applies to legislators, legislative employees, and third parties. The individuals subject to this policy are expected to comply with this policy and take appropriate measures to ensure the prohibited conduct does not occur.

## DEFINITIONS

1. "Contact person" means:
   a. The Senate Majority Leader or Minority Leader or a designee of the opposite gender; and
   b. The House of Representatives Majority Leader or Minority Leader or a designee of the opposite gender;
2. "Legislative employee" includes an employee of the Legislative Assembly or a volunteer providing services to the Legislative Assembly.
3. "Sexual harassment" includes harassment based on sex or sexual orientation and consists of unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature when:
   a. Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment;
   b. Submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting the individual; or
   c. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
4. "Third party" includes a member of the media, a lobbyist, and any other individual involved in the legislative process.
5. "Workplace harassment" includes sexual harassment or harassment based on disability, race, creed, color, religion, age, national origin, military status, genetic information, or ancestry, including verbal or physical behavior or conduct, which denigrates or shows hostility or aversion toward an individual because of that individual's disability, race, creed, color, sex, sexual orientation, religion, age, national origin, military status, genetic information, or ancestry or which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

## COMPLAINTS

1. An individual who believes he or she has been subjected to any type of workplace harassment is encouraged to report the conduct to an appropriate contact person as soon as possible. The complaint may be verbal or in writing and should specifically describe the conduct. If the complaint is not in writing, the contact person receiving the complaint shall create a written record describing the circumstances comprising the complaint. The contact person shall complete the intake requirements in the *Checklist for Intake and Investigations Under the North Dakota Legislative Assembly Policy Against Workplace Harassment* and refer the written complaint or written record of the complaint to a review panel consisting of five members. The Majority Leader and Minority Leader of each house each shall select one member and the final member must be selected by the four members appointed by the Majority and Minority Leaders. The review panel either shall investigate the complaint as promptly and confidentially as practicable by interviewing the complainant, the accused individual, and any witnesses or coworkers, and by considering the circumstances surrounding the alleged incident or incidents that form the basis of the complaint, or forward the complaint and any record relating to the complaint to an independent investigator unaffiliated with the legislative branch who has experience in conducting workplace harassment investigations. The

review panel or investigator shall complete the investigation requirements in the *Checklist for Intake and Investigations Under the North Dakota Legislative Assembly Policy Against Workplace Harassment*, including conducting investigation requirements in the checklist for an investigation and preparing findings of fact and recommendations for resolution of the complaint, within 25 calendar days of receipt of the complaint by the contact person. The review panel may grant extensions of the 25-day deadline as reasonably necessary, but in no case may the contact person, review panel, and investigator take more than 75 calendar days to complete the checklist. The review panel shall inform both the complainant and the individual accused of the outcome of the investigation and the recommendations for resolution.

2. The Legislative Assembly is responsible for the cost of an independent investigator hired pursuant to this policy.
3. This policy does not require an individual accused of workplace harassment to involuntarily provide any facts, information, or evidence in response to an investigation of a complaint or to involuntarily sign a written statement or confession.

## RESOLUTION OF A WORKPLACE HARASSMENT COMPLAINT

If an investigation results in a determination this policy has been violated, appropriate disciplinary action will follow. As a general rule, remedies must be assessed proportionate to the seriousness of the violation. For legislative employees, this may include an apology, direction to stop the offensive conduct, counseling or training, oral warning, written warning, suspension, demotion, termination, or referral for criminal prosecution. If a legislator has violated this policy, disciplinary action according to constitutional and statutory provisions and the rules of the appropriate house of the Legislative Assembly may include an apology, direction to stop the offensive conduct, private or public admonishment, removal from leadership positions, punishment for contempt, referral for criminal prosecution, and expulsion. If a third party has violated this policy, disciplinary action may include an apology, direction to stop the offensive conduct, restricted or elimination of access to legislative committee rooms and the legislative chambers, revocation of media credentials, referral to employer for disciplinary action, or referral for criminal prosecution.

If workplace harassment recurs after a complaint is made, the complainant is encouraged to bring the matter to the attention of a contact person immediately.

## CONFIDENTIALITY

Any record pertaining to a complaint or investigation of workplace harassment against public employees is an exempt record under North Dakota Century Code Section 44-04-18.1 until the investigation is complete but no longer than 75 calendar days from the date the complaint was made. For the purposes of this policy, a public employee includes a legislative employee and a legislator. While the records relating to a complaint are exempt, a contact person may share information relating to a complaint or investigation only with an individual who has a legitimate need to know the information to perform legislative work duties or participate in the investigation. Except as necessary to perform the work duties or participate in an investigation, legislators, employees, and contractors of the Legislative Assembly may not disclose information received regarding a complaint or investigation as long as records pertaining to the complaint or investigation are exempt. Any disclosure allowed under this provision during that period must be limited to the minimum information necessary.

Any request for records pertaining to a complaint or investigation of workplace harassment must be forwarded to the Director of the Legislative Council.

## EVIDENTIARY STANDARDS

Disciplinary action must be taken if the evidence, when viewed from the perspective of a reasonable individual with the same disability, or of the same race, creed, color, sex, sexual orientation, religion, age, national origin, military status, genetic information, or ancestry as the complainant, supports the claim of the complainant.

## RETALIATION

1. It is prohibited to subject an individual to any coercion, intimidation, retaliation, interference, or discrimination for having complained of workplace harassment or for having assisted or participated in an investigation of alleged workplace harassment. An individual found to be in violation of this prohibition is subject to appropriate disciplinary action ranging from a written warning or reprimand, suspension with or without pay, termination of employment, or removal from a position.
2. An individual who believes he or she may have been the subject of coercion, intimidation, retaliation, interference, or discrimination for having complained of workplace harassment or for having assisted or

participated in an investigation related to an allegation of workplace harassment is encouraged to report that information to a contact person.

## FALSE COMPLAINT

Any complaint of workplace harassment found to be intentionally or recklessly dishonest or malicious will not be tolerated.

## TRAINING

During each organizational session and at other times deemed appropriate by the Legislative Management, the Legislative Council shall conduct or arrange to conduct mandatory classes and training sessions regarding workplace harassment for legislators and legislative employees.

# CHECKLIST FOR INTAKE AND INVESTIGATIONS UNDER THE NORTH DAKOTA LEGISLATIVE ASSEMBLY POLICY AGAINST WORKPLACE HARASSMENT

## INTRODUCTION

Pursuant to the *North Dakota Legislative Assembly Policy Against Workplace Harassment* ("policy"), an individual covered by the policy who believes he or she has been subjected to workplace harassment may report the conduct to a contact person identified in the policy. The policy requires the contact person to ensure there is a written record of the complaint and to refer the matter to a review panel selected by the Majority Leader and Minority Leader of each house. The review panel shall investigate the matter or forward the complaint to an independent investigator. This memorandum provides a checklist of steps the complaint intake and investigation must include.

## CHECKLIST OF INTAKE REQUIREMENTS

A contact person who receives a complaint from an individual who believes he or she was subjected to workplace harassment shall:

- ☐ Document the date and time of the complaint and the name of the individual making the complaint;
- ☐ If the complaint is verbal, create a written record describing the circumstances comprising the conduct being reported;
- ☐ Determine whether there is immediate risk of harm to the individual making the complaint and, if so, notify the review panel members (the panel must meet immediately to determine how to address the risk);
- ☐ If there is no immediate risk of harm to the individual making the complaint, schedule a meeting of the review panel to occur within 48 hours of receipt of the complaint and ensure the review panel members are notified of the meeting;
- ☐ Inform the individual making the complaint of the next steps in the process of investigating the complaint, what to do if he or she is contacted by the individual accused of harassment, and, if he or she is a state employee, the contact information for the employee assistance program;
- ☐ Create a file for records arising from or related to the intake and ensure access to the file is protected in accordance with the confidentiality provisions of the policy;
- ☐ Submit a copy of the written records arising from or related to the intake to the review panel members before the meeting; and
- ☐ Document whether all checklist requirements were fulfilled.

## CHECKLIST OF INVESTIGATION REQUIREMENTS

When the review panel receives a complaint of alleged workplace harassment from a contact person, the review panel may investigate the matter or refer the matter to an independent investigator unaffiliated with the legislative branch who has experience in conducting workplace harassment investigations. The review panel or the investigator shall take the following steps as promptly and confidentially as practicable:

- ☐ Document the date and time of receipt of the complaint;
- ☐ Notify the Risk Management Division of the Office of Management and Budget;
- ☐ Create a file for records arising from or related to the investigation and ensure access to the file is protected in accordance with the confidentiality provisions of the policy;
- ☐ Develop an investigation plan including:
  - ☐ An interview of the individual who made the complaint, including addressing procedures to protect the individual from any additional threatening actions or retaliation;
  - ☐ An interview of the individual accused of workplace harassment after informing that individual the individual does not have to provide information or records involuntarily or sign any document involuntarily and informing the individual of necessary boundaries during the investigation;
  - ☐ Interviews of any witnesses of the alleged workplace harassment;
  - ☐ Interviews of coworkers or others reasonably believed to have relevant information;
  - ☐ Consideration of the circumstances surrounding the complaint;

- Consideration of any written statements provided by witnesses, the individual accused of workplace harassment, or others with information the investigator deems relevant; and
- Consideration of any other records or circumstances the investigator deems relevant.

- Carry out the investigation plan, amending the plan as required by circumstances, and document each interview and other action taken under the plan;
- Determine whether referral to a law enforcement agency is warranted;
- Determine whether the policy was violated based on the evidentiary standards set forth in the policy;
- Prepare findings of fact and recommendations for resolution, provide copies of the findings and recommendations to the individual who reported the alleged workplace harassment and the individual accused of the alleged workplace harassment, and have the individuals sign a document acknowledging receipt of the findings of fact and recommendations for resolution;
- Inform the individual who reported the alleged workplace harassment and the individual accused of the alleged workplace harassment that each has an opportunity to submit written responses, and place any written responses received in the investigation file;
- If the policy was violated, inform the employer of the individual who violated the policy and notify the employer of the recommendations for resolutions, or, if the individual is a legislator, notify the Majority Leader and Minority Leader of the chamber in which the legislator serves;
- Place documentation of any disciplinary action taken by an employer or other entity as a result of the investigation in the investigation file;
- Document whether all checklist requirements were fulfilled; and
- If the investigator is an independent investigator, provide the review panel the investigation file and a summary of the investigation, including the findings of fact and recommendations for resolution.