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 Majority Leader of the Senate, or the Majority Leader's designee of the opposite gender, for legislative employees of the Senate;
   b. The Majority Leader of the House of Representatives, or the Majority Leader's designee of the opposite gender, for legislative employees of the House;
   c. Either the Majority Leader of the Senate, or the Majority Leader's designee of the opposite gender, or the Majority Leader of the House, or the Majority Leader's designee of the opposite gender, for legislators, third parties, and any other individuals with a complaint;
   d. The Director of the Legislative Council, or the Director's designee of the opposite gender, for employees of that office;
   e. The Legislative Council Legal Division Director, or the Director's designee of the opposite gender, for employees of the Legal Division;
   f. The Legislative Budget Analyst and Auditor, or the Legislative Budget Analyst and Auditor's designee of the opposite gender, for employees of the Fiscal Division; or
   g. The Director of the Administrative Services Division of the Legislative Council, or the Director's designee of the opposite gender, for employees of the Administrative Services Division.
2. "Legislative employee" includes an employee of the Legislative Council, an employee of the Legislative Assembly, a legislative intern, and volunteer staff.
3. "Legislator" means a member of the Legislative Assembly.
4. "Sexual harassment" includes harassment based on sex or sexual orientation and consists of unwelcome sexual advances, requests for sexual favors, and other verbal 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.
5. "Third party" includes a member of the media, a lobbyist, and any other individual involved in the legislative process.
6. "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. A legislator, legislative employee, or third party who is the recipient of any type of workplace harassment is encouraged to contact the appropriate contact person directly. The complainant may submit the complaint to either gender contact person. The complaint may be verbal or in writing and should specifically describe the incident or incidents. If the complaint is not in writing, the contact person who receives the complaint shall create a written record describing the circumstances comprising the complaint. The contact person shall investigate the complaint as promptly and confidentially as practicable by interviewing the complainant, the individual accused, and any witnesses or co-workers, and by considering the circumstances surrounding the alleged incident or incidents that form the basis of the complaint.
2. When a workplace harassment complaint is made, the contact person shall create a separate file for the complaint, and access to the file must comply with the confidentiality provisions of this policy. The contact person shall place all written documentation arising from the complaint in the file including:
   a. The complaint;
   b. The contact person's written record regarding the complaint, if the complaint was made verbally;
   c. The contact person's or other investigator's notes, information, and other writings regarding the investigation;
   d. Witness statements;
   e. Any written response of the individual accused;
   f. The outcome of the investigation including any disciplinary measures taken; and
   g. Any other record regarding the alleged harassment.
3. The contact person may gather the following facts from the complainant, the individual accused, and any witnesses or co-workers:
   a. **From the complainant:**
      (1) A description of the incident or incidents including where and when the incident or incidents took place.
      (2) Whether any similar incidents have happened before.
      (3) An explanation of how the incident or incidents affected the complainant.
      (4) A description of the complainant's reaction to the incident or incidents.
      (5) Whether there were any witnesses to the facts surrounding the incident or incidents or any other evidence of its occurrence.
   b. **From the individual accused:**
      (1) A description of the incident alleged to have occurred.
      (2) If the individual accused claims the allegation is false, any reason why the complainant may be fabricating the complaint.
      (3) Whether there were any witnesses to the incident or incidents or any other evidence surrounding the complaint.
   c. **From witnesses or co-workers:**
      (1) What they observed.
      (2) How they reacted to the facts surrounding the incident.
      (3) What the complainant or the individual accused of workplace harassment told them.
4. 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.
5. Following the investigation and, after any appropriate consultation, the contact person may resolve the complaint in accordance with this policy. The contact person shall inform both the complainant and the individual accused of the outcome of the investigation. Resolution may include disciplinary action when appropriate.

6. The contact person may hire an independent investigator to examine the complaint. In any instance in which the individual accused of workplace harassment is a legislator, the investigator may not be an employee of the legislative branch and must have experience conducting investigations of harassment. The investigator shall conduct an investigation and present draft findings of fact and recommendations to the contact person within 60 days of hiring. The cost of an independent investigator hired pursuant to this rule must be paid by the Legislative Assembly.

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. A contact person may share information about 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 Council and 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.

Some records pertaining to a complaint or investigation of workplace harassment may constitute Legislative Council work product, which is not subject to disclosure under Section 44-04-18.6. 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 the appropriate contact person.

RESOLUTION OF A WORKPLACE HARASSMENT COMPLAINT

1. If the contact person determines 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, or termination. If the contact person determines a legislator has violated this policy, the contact person shall inform leadership of the respective body who shall handle any disciplinary action according to constitutional and statutory provisions and the rules of the appropriate house of the Legislative Assembly.
2. If workplace harassment recurs after a complaint is made, the complainant is encouraged to immediately bring the matter to the attention of the appropriate contact person.

FALSE COMPLAINT

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