

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, unless the complaint is regarding the Senate Majority Leader or Minority Leader, in which case the contact person is the President Pro Tempore; and
 - b. The House of Representatives Majority Leader or Minority Leader or a designee of the opposite gender, unless the complaint is regarding the House Majority Leader or Minority Leader, in which case the contact person is the Speaker of the House.
2. "Legislative employee" includes an employee of the Legislative Assembly or a volunteer providing services to the Legislative Assembly.
3. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, or any other unwelcome conduct or communication of a sexual nature, and may occur between individuals of the same or a different gender.
4. "Third party" includes a member of the media, a lobbyist, and any other individual involved in the legislative process.
5. "Workplace harassment" includes:
 - a. Sexual harassment.
 - b. 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.
 - c. Harassment that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment.

The term does not include behavior or conduct that an individual considers rude or offensive, unless the behavior or conduct is pervasive or severe.

COMPLAINTS AND INVESTIGATION

1. An individual who believes he or she has been subjected to 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.
 - a. **Verbal complaint:** If the complaint is not in writing, the contact person receiving the complaint shall create a written record describing the circumstances comprising the complaint using the *Workplace Harassment Complaint Form*.
 - b. **Immediate risk of harm:** Upon receipt of the complaint, the contact person shall determine whether there is an immediate risk of harm to the individual making the complaint. If there is an immediate risk of harm, the contact person immediately shall notify the Majority and Minority Leaders of each house to determine how to address the risk.

- b-c. Intake checklist (48 hours):** The contact person shall coordinate with the Legislative Council to complete the Workplace Harassment Complaint Intake Checklist within 48 hours of receiving the complaint.
- e-d. Notification of leadership:** The ~~contact person~~ Legislative Council shall ensure the Majority and Minority Leaders of each house receive a copy of the completed *Workplace Harassment Complaint Intake Checklist* ~~within 24 hours of receiving a complaint~~, unless a Majority or Minority Leader was the subject of the complaint or the complainant, in which case the complaint must be forwarded to the Speaker of the House or President Pro Tempore of the Senate in place of the Majority or Minority Leader.
- d-e. Summary dismissal:** Upon review, if the conduct or circumstances reported in the complaint do not fall within the scope of the workplace harassment policy, the complaint may be summarily dismissed upon unanimous consent of the four leaders. A complaint must be summarily dismissed if there is not sufficient information to create a reasonable belief that a violation under the workplace harassment policy has occurred. Mere speculation is insufficient to proceed with a complaint. The consent of the Speaker of the House or President Pro Tempore of the Senate may be substituted if the subject of the complaint or the complainant is a Majority Leader or Minority Leader. The *Workplace Harassment Complaint Intake Checklist* and a document summarizing the reason for summarily dismissing the complaint must be ~~provided to~~ maintained by the Legislative Council ~~for retention~~ in a secure, permanent file.
- e-f. Appointment of review panel or referral for informal resolution (7 days):** For a complaint that is not summarily dismissed, within 7 days of the date the complaint was received, the Majority Leader and Minority Leader of each house shall appoint a review panel or refer the matter to the Majority Leader or Minority Leader of either house for informal resolution.
- (1) **Informal resolution:** If the matter is referred for informal resolution, the leader shall determine the appropriate method for resolving the complaint. A document summarizing the resolution of the complaint must be maintained by the Legislative Council in a secure, permanent file. If the informal resolution process is unsuccessful, a review panel must be appointed.
- (2) **Appointment of review panel:** To appoint a review panel, each leader shall appoint one member of the review panel, and the final member of the review panel must be appointed by the four members appointed by the Majority and Minority Leaders. The appointment power of the Majority Leader or Minority Leader must be relinquished to the President Pro Tempore of the Senate or the Speaker of the House of Representatives if the Majority Leader or Minority Leader is the subject of the complaint or the complainant. The individuals appointing the panelists shall forward the materials received from the contact person to the panelist they appoint.
- f-g. First meeting (7 days):** The ~~five-member~~ review panel ~~must be appointed and~~ shall hold its first meeting within ~~72 hours~~ 7 days after ~~the complaint is received by a contact person~~ the final member of the review panel has been appointed or by a date mutually agreed upon by the contact person and the complainant.
- g-h. Alternative dispute resolution:** The review panel shall afford the complainant and accused the opportunity to informally negotiate or mediate a resolution of the complaint, which may not be commenced without consent of both parties. The negotiation or mediation must be conducted by the Majority and Minority Leaders in an informal manner with the goal of resolving the matter without further investigation. The review panel may engage outside counsel or a mediator instead of the Majority ~~or~~ and Minority Leaders to conduct the informal negotiation or mediation. If the complaint is resolved through informal negotiation or mediation, the Majority ~~or~~ and Minority Leaders or outside counsel or mediator shall document the resolution and report the resolution to the review panel. Complaints resolved through informal negotiation or mediation must be deemed closed. The *Workplace Harassment Complaint Intake Checklist* and a document summarizing the informal negotiation or mediation must be ~~provided to~~ maintained by the Legislative Council ~~for retention~~ in a secure, permanent file.
- h-i. Determination of who will investigate:** If either party does not wish to participate in an alternative dispute resolution process, or the process is unsuccessful in resolving the complaint, the review panel shall:
- (1) Determine whether the panel will investigate the complaint, or
 - (2) Forward the *Workplace Harassment Complaint Intake Checklist* and any record relating to the complaint to an independent investigator unaffiliated with the legislative branch who has experience in conducting workplace harassment investigations.
- If an independent investigator is hired, the Legislative Assembly is responsible for the cost of an independent investigator.
- i-j. Investigation and findings (25 days):** The review panel or investigator shall complete the investigation requirements in the *Workplace Harassment Complaint Investigation Checklist* and prepare findings of

fact, and recommendations for resolution of the complaint if a violation of the policy is found, within 25 calendar days of ~~receipt of the complaint by the contact person~~ the first meeting of the review panel. 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.

- ~~j.k.~~ **Maximum duration with extensions (75 days):** The review panel may grant extensions of the 25-day deadline as reasonably necessary, but in no case may the findings of fact and any recommendations for resolution be issued more than 75 calendar days from the date the complaint was received. The review panel shall inform both the complainant and the individual accused of the outcome of the investigation and the recommendations for resolution if a violation is found.
 - ~~k.l.~~ **Retention:** The review panel or independent investigator shall forward all documents related to the complaint to the Director of the Legislative Council for retention in a secure, permanent file once the investigation is complete and the findings of fact and any recommendations for resolution have been issued.
- ~~2. The Legislative Assembly is responsible for the cost of an independent investigator hired pursuant to this policy. If a potential complainant discusses a concerning situation with a contact person without making a formal complaint, the contact person is encouraged to document the conversation with the potential complainant and forward the documentation, including any records received from the potential complainant, to the Legislative Council for maintenance in a secure, permanent file. Such information and records stored by the Legislative Council are considered Legislative Council-client communication under North Dakota Century Code Section 44-04-18.6 and not subject to Section 44-04-18 and Section 6 of Article XI of the Constitution of North Dakota.~~
 - ~~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. Upon becoming aware of any concerning behavior of a member of a Majority Leader or Minority Leader's party, the leader shall take steps to address the behavior, regardless of whether a complaint is made.~~

RESOLUTION OF A WORKPLACE HARASSMENT COMPLAINT

1. If ~~an~~ the evidence, when viewed from the perspective of a reasonable individual, supports the claim of the complainant and the investigation results in a determination this policy has been violated, appropriate disciplinary action ~~will~~ must be taken.
2. As a general rule, remedies must be assessed proportionate to the seriousness of the violation.
3. For **legislative employees**, this may include an apology, direction to stop the offensive conduct, counseling or training, oral warning, written warning, suspension, demotion, termination, and referral for criminal prosecution.
4. 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.
5. 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, and referral for criminal prosecution.
- ~~6. Disciplinary action must be taken if the evidence, when viewed from the perspective of a reasonable individual, supports the claim of the complainant.~~
- ~~7.~~ 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~~ DISCLOSURE OF RECORDS

- ~~1. 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. After the investigation is complete, but no longer than 75 calendar days from the date the complaint was received, the records relating to the complaint are an open record subject to disclosure.~~
- ~~2. For the purposes of this policy, a public employee includes a legislative employee and a legislator. Section 44-04-18.1 provides records relating to a public entity's internal investigation of a complaint against a public~~

entity or employee for misconduct are exempt until the investigation is complete or until 75 days have passed since the complaint was made, at which time the records become subject to disclosure under state open records laws.

- ~~3.2.~~ 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.
- ~~4.3.~~ 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.
- ~~5.4.~~ Any request for records pertaining to a complaint or investigation of workplace harassment must be forwarded to the Director of the Legislative Council.
- 5. The Legislative Council is not required to disclose its work product or client communications or communications between a member of the Legislative Assembly and any person under Section 44-04-18.6. Any such record related to a complaint that is withdrawn or settled through informal resolution or alternative dispute resolution under this policy while the records are exempt under Section 44-04-18.1 is considered exempt, regardless of the time elapsed since the complaint was made.

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, and separate, additional classes and training sessions for contact persons regarding receiving and investigating complaints.