

SEXUAL HARASSMENT PREVENTION TRAINING & POLICIES ISSUES AND OPTIONS FOR CONSIDERATION

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TRAINING

Currently, sexual harassment prevention is covered in the general human resources discussion during legislator orientation and is also included in session staff training. It is not mandatory for legislators or House or Senate staff and no alternatives are currently offered. All legislators and staff receive a brochure that covers what harassment is and includes Joint Rule 10-85 that outlines our current process.

In 2018, all Legislative Branch permanent employees received a one-hour training from the Professional Development Center (PDC). The PDC is also developing an online training for state employees. A more extensive process for permanent staff is included in the Administrative Manual.

NCSL provides these best practices for training:

- ✓ Training should be done in a classroom setting with a live trainer.
- ✓ Training should be mandatory.
- ✓ Training should include a summarization of the national laws on sexual harassment, as well as state- and legislature-specific policies.
- ✓ The legislative HR director, or other individual(s) tasked with receiving sexual harassment complaints, should be present during the training.
- ✓ Training should be offered at new member or new employee orientations.
- ✓ Leadership should be engaged in the training.
- ✓ Training should incorporate case studies and examples of harassment, specifically highlighting situations unique to the legislature.
- ✓ Annual training should be dynamic and vary by topics covered and in presentation style.
- ✓ Trainers should ask attendees to fill out evaluations to ensure the training is meeting their needs.
- ✓ There should be separate training for legislative staff and membership.

The Equal Employment Opportunity Commission (EEOC) Harassment Prevention Report discusses three kinds of training: compliance training, bystander intervention training, and workplace civility training. The EEOC referenced that its training not only focuses on what employees should not do, and the legal concepts underlying harassment law (similar to PDC training), but also on what employees should do, and on positive behaviors that may prevent inappropriate or illegal behaviors.

Options for improving training include:

- expand training to include a specific prevention of sexual harassment training:
 - during orientation; or
 - during the first week of session (easier for leadership to participate); and

- determine whether it is mandatory or not, and, if mandatory, how to hold a make-up session(s) to ensure attendance.
- include in Presiding Officer training;
- decide whether to use an inside or an outside trainer or materials and adapt to the legislative environment; e.g., NCSL, other legislative trainers, EEOC;
- adapt the Montana state PDC training for legislative environment: one-hour in-person training, or potentially could use online training only for those who cannot attend;
- develop or purchase an online training; and
- discuss how to handle training for lobbyists and other legislative employees, such as pages and caucus staff, who may not receive the regular staff training.

PROCEDURES

Currently, Joint Rule 10-85 has information regarding process for reporting harassment for legislators and session and permanent staff. In an analysis done by Todd Everts, the rule leaves some questions as to:

- What constitutes a formal or informal complaint?
- How to handle complaints from the various parties that are not legislators or legislative staff?
- Which chamber/leader/Rules Committee would handle the matter, the complainant's or the alleged offending party's leader? In a traditional employment relationship, the complainant would go to their manager or supervisor and to human resources. Should more than one leader receive the information?
- Are confidentiality and due process adequate in the rule?
- If there needs to be an inquiry or investigation, who should conduct it?
- The Joint Rules and the statutes do not provide for a clear process to deal with complaints during the interim.
- There is no mention of retaliation in the rule, which is prohibited by state and federal law.
- It is unclear regarding the process for dispensing discipline or corrective actions (i.e., who is the judge and jury with respect to the complaint).

Other areas that need discussion include:

- What are the consequences if harassment is found to have occurred? Who has the authority to impose consequences? What are appropriate corrective actions?
- Where should the files for complaints and inquiry results be maintained? Important for seeing patterns of behavior and documenting what action has been taken.

In an NCSL webinar, recommendations were made regarding the best practices for investigating harassment complaints. Some other relevant things to consider in developing a procedure are:

- Should the person receiving the report be the one to conduct the inquiry or investigation; i.e., a third-party, human resources, leader of caucus of complainant or offender? Objectivity in a highly emotional situation and a politically charged atmosphere may make a third-party investigator the best option. Should all the leaders or a group of leaders be involved?

- Who should be informed of the investigation; e.g., just leaders of caucuses involved, only leader that receives a complaint, all leaders? Should HR receive information for all complaints? In litigation for a hostile workplace, if the reports were not shared in a central location, there still may be the conclusion that the “employer” should have known about the harassment, yet there may not be a coordinated effort to show prompt and appropriate corrective action. It would likely be unwieldy for each chamber or caucus to be responsible for only their members, etc.
- Who should be interviewed?
- Does there need to be interim actions before the inquiry or investigation is final?
- To whom are recommendations made?
- Who makes the final decision?
- What corrective actions are appropriate to the offense and relevant to a legislator, staffer, lobbyist?

Options:

- Review other legislatures for procedures and draft a new policy and procedure that further defines the rule to include more detail for the different types of complainants and alleged offenders. Note: The Administrative Manual for the Legislative Branch permanent employees outlines a current process that could be adapted for legislators.
- Once a policy and process is adopted, the Joint Rules and statutes should be reviewed for necessary changes.

BUDGET

Currently, there is no additional budget should the policy require third-party investigations, legal counsel, or other costs. The House and Senate have budgets for session and the leaders each have a leadership budget for additional expenses. Both of these budgets are under the authority of the respective leader. The Legislative Council, in the past, has had some contracted services budget and an emerging issues account. Sometimes there are unexpended funds available from the previous biennium that can be used for any purpose that are consistent with the goals and objectives of an agency. Prior to expending the funds, the Legislative Services Division would have to report to the Legislative Council how it would expend the funds.

- Consider small amount of funding to implement policy if necessary to contract with a third-party or other expenses in enforcing the policy.

Resources:

- Joint Rule 10-85. Rules of the Montana Legislature (2017)
- A Guide for Montana Legislatures, Harassment is Against the Law. (brochure – 2016)
- A Guide for House and Senate Employees, Harassment is Against the Law. (brochure – 2016)
- Chapter 10, Employee Rights and Responsibilities, III. Nondiscrimination and harassment. Montana Legislative Branch Administrative Manual (12/2017)
- Policies regarding sexual harassment from the following state legislatures: Alabama, New Mexico, Colorado, Hawaii, Maryland, Oregon.

- Letter from New Hampshire leadership to lobbyists outlining their rights and the policy against harassment.
- Investigating Harassment Complaints: Best Practices. Prepared for NCSL (2018 Webinar)
- Harassment Prevention Training, John Paveo, Professional Development Center. (2018 Powerpoint)
- Harassment is Against the Law, ICCW and State HR Division. (January 2017 Brochure)
- Legislative Sexual Harassment Training on the NCSL Website:
<http://www.ncsl.org/research/about-state-legislatures/legislative-sexual-harassment-training.aspx> and additional resources:
 - LegisBrief: Sexual Harassment Policies and Training in State Legislatures
 - Our American States Podcast: Tackling Sexual Harassment in the Legislature
 - Key Findings of the EEOC's Select Task Force on the Study of Sexual Harassment in the Workplace
 - NCSL's February 9 Webinar on Sexual Harassment Prevention
 - NCSL's Resource Page on Legislative Sexual Harassment Policies
 - EEOC's Harassment Prevention and Respectful Workplaces Training Resource Page

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