

Sexual Harassment Policy of The General Assembly¹

Prepared by the Office of Legislative Legal Services

A. SEXUAL HARASSMENT POLICY STATEMENT

1. Pursuant to the sexual harassment policy contained in Joint Rule 38, it is the policy of the General Assembly to create and maintain a work environment in which all members of the General Assembly, legislative employees, and third parties are treated with dignity and respect. Members, legislative employees, and third parties have the right to a workplace that is free from harassment, both subtle and overt. Therefore, the General Assembly will strive to eliminate sexually harassing behavior which members, legislative employees, and third parties may encounter in the course of their work.

B. APPLICABILITY

1. This Policy shall be applicable to all legislative employees who are not subject to the state personnel system, each member of the General Assembly, and third parties.

C. DEFINITIONS

1. As used in this Policy:
 - a. "Contact person" means:
 - I. The director of Legislative Council, or the person of the opposite gender whom the director shall designate, for legislative employees of that office;
 - II. The director of the Office of Legislative Legal Services, or a person of the opposite gender whom the director shall designate, for legislative employees of that office;
 - III. The staff director of the Joint Budget Committee, or a person of the opposite gender whom the staff director shall designate, for legislative employees of that office;
 - IV. The State Auditor, or a person of the opposite gender whom the State Auditor shall designate, for legislative employees of that office who are not in the state personnel system;
 - V. The secretary of the Senate, or a person of the opposite gender whom the secretary shall designate, for legislative employees of that office;
 - VI. The chief clerk of the House of Representatives, or a person of the opposite gender whom the chief clerk shall designate, for legislative employees of that office;
 - VII. Either the President of the Senate, or a person of the opposite gender whom the President shall designate, or the Speaker of the House of Representatives, or a person of the opposite gender whom the Speaker shall designate for members, third parties, and any

¹ Also see the following legislative rules regarding the sexual harassment policy of the General Assembly: Joint Rule 38: Sexual harassment policy; Joint rule 36 (b)(10): Lobbying practices - prohibited practices; Joint rule 36 (d)(6): Lobbying practices - violations-complaint

other person with a complaint; or

VIII. In addition to a designee described in subparagraphs I. through VII. of this paragraph a., a person of the same gender designated at the discretion of a legislative service agency director, the state auditor, the secretary of the Senate, or the chief clerk of the House of Representatives for legislative employees of their respective offices, or at the discretion of the President of the Senate or the Speaker of the House of Representatives for members, third parties, and any other person with a complaint.

- b. "Legislative employee" means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, the Senate, or the House of Representatives.
- c. "Member" means a member of the General Assembly.
- d. "Third parties" means newsmen, lobbyists, interns, and members of the general public who have business at the state capitol or who are doing business with legislative service agencies, the Senate, or the House of Representatives, or to any legislative aide to a member.

D. DEFINITION OF SEXUAL HARASSMENT

- 1. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an 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; or
 - 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.

E. EXAMPLES

- 1. The following are examples of conduct or communication which, **WHEN UNWELCOME AND DEPENDING UPON THE TOTAL CIRCUMSTANCES**, may constitute sexual harassment:
 - a. **VERBAL:**
 - I. Sexual comments or innuendos about one's clothing, body, or sexual activity.
 - II. Discussing sexual topics in the workplace, such as sexual practices or preferences or telling sexual jokes or stories.
 - III. Requesting or demanding sexual favors or suggesting that there is any connection between sexual behavior and any term or condition of employment, whether that connection be positive or negative.
 - IV. Using sexual words or phrases.

b. **NONVERBAL:**

- I. Displaying sexually explicit pictures or objects in the work area.
- II. Giving personal gifts of a sexual nature, except when anticipated to be welcome as part of an event such as a bachelor party or significant birthday.
- III. Making sexually suggestive gestures.
- IV. Making unwelcome visits to a member's, legislative employee's, or third party's home or hotel room.

c. **PHYSICAL:**

- I. Kissing of a member, legislative employee, or third party, unless the kissing is a customary demonstration of affection, is clearly not objected to, and is made in connection with a greeting or parting, such as a "peck" on the cheek.
- II. Patting, pinching, or intentionally brushing against a member's, legislative employee's, or third party's body.
- III. Sexual contact, intercourse, or assault.

2. The examples in paragraph 1 are illustrative of the communications and conduct which may constitute sexual harassment if unwelcome and depending upon the totality of the circumstances. In that regard, the following should be kept in mind:

- I. A single incident may or may not constitute sexual harassment.
- II. Whether a particular action is sexual harassment will depend on the facts and determinations will be made on a case-by-case basis.
- III. Conduct or communications that might be welcome to one person may be unwelcome to another person. Conduct or communications that might have been welcome between two individuals at one time may become unwelcome at a later time.
- IV. Other conduct or a communication not expressly described in the examples, but which is substantially similar to the examples, may be violative of this policy.

F. COMPLAINTS

1. A member, legislative employee, or third party who is the recipient of sexual harassment in the workplace, in any manner from anyone, should contact the appropriate contact person directly. The complaint should be in writing and specifically describe the incident or incidents. The complaint shall be investigated as promptly and confidentially as possible by interviewing the complainant, the person accused, and any witnesses, and by considering all of the circumstances surrounding the alleged incident or incidents which form the basis of the complaint.
2. The following facts may be gathered in such an investigation from the complainant, the person accused, and any witnesses or co-workers:

a. **From the complainant:**

- I. A description of the incident or incidents including where and when the incident or

incidents took place.

- II. Whether a similar incident or incidents has or have happened before.
- III. An explanation of how the incident or incidents affected the complainant's work.
- IV. A description of the complainant's reaction to the incident or incidents.
- V. Whether there were any witnesses to the facts surrounding the incident or incidents or any other evidence of its occurrence.

b. From the person accused:

- I. An explanation of the facts surrounding the complainant's allegations and a request for a response.
- II. Any reason why the complainant might be fabricating the complaint.
- III. Whether there were any witnesses to the incident or incidents or any other evidence surrounding the complaint.

c. From witnesses or co-workers:

- I. What they observed.
- II. How they reacted to the facts surrounding the incident.
- III. What the complainant told them.

3. Nothing in paragraph b. of subsection 2. of this section F., or any other provision of this Policy, shall require any person accused of sexual harassment to involuntarily provide, either orally or in writing, any facts, information, or evidence in response to an investigation of a complaint or to involuntarily sign a written statement or confession.

4. Following the investigation, the contact person, after any appropriate consultation, may resolve the complaint. Records of the complaint maintained by the contact person shall be made available to the person accused of sexual harassment. (See section H. of this Policy) Both the complainant and the person accused will be informed of the outcome of the investigation. Resolution may include disciplinary action when appropriate.

5. Under some circumstances, utilization of an outside investigating team, such as the American Arbitration Association, may be considered.

6. The rights of a legislative employee under this policy are distinct from any right a legislative employee may have to file a charge of discrimination with the United States Equal Employment Opportunity Commission or the Colorado Civil Rights Division as provided by law.

G. RETALIATION PROHIBITED

1. No person will be subject to retaliation for having complained of sexual harassment or for having assisted or participated in an investigation of alleged sexual harassment.

H. RECORDKEEPING

1. Complaints of sexual harassment will be investigated and handled as discreetly as possible with information being shared with those having a need to know and in accordance with law as follows:
 - a. When a sexual harassment complaint is made, the contact person shall create a separate file under the complainant's name. All written documentation arising from the complaint shall be placed in the file including, but not limited to, the written complaint, the contact person's investigatory notes, information, and other writings, witness statements, and any disposition of the complaint.
 - b. Section 24-72-204 (3)(a)(X), C.R.S., applies to records maintained of sexual harassment complaints under this policy. Specifically, it provides that:
 - I. Any records of sexual harassment complaints and investigations maintained pursuant to Joint Rule 38 on sexual harassment are not subject public inspection.
 - II. Records of the complaint shall be made available to a "person in interest", which includes the complainant and the person accused.
 - III. A person accused of sexual harassment may make records kept pursuant to this policy available for public inspection in order to support the contention that an allegation of sexual harassment is false.

I. RESOLUTION OF A COMPLAINT

1. When a determination is made that sexual harassment has occurred, appropriate disciplinary action will follow. As a general rule, remedies will be assessed proportionate to the seriousness of the offense. For legislative employees this may include, but not necessarily be limited to, an apology, direction to stop the offensive conduct, counseling or training, oral warning, written warning, suspension with or without pay, or termination. Disciplinary action involving members will be handled by leadership of the respective body or according to the rules of each house of the General Assembly.

Resolution of complaints involving legislative employees will be handled by the appropriate contact person. If a member is involved in a complaint situation, resolution may be discussed directly with the member or taken to leadership of the respective body, depending on the circumstances. If a third party is involved, complaints and the resolution will be handled by the appropriate contact person.

If the sexual harassment recurs after a complaint is made, the complaint should immediately be brought to the attention of the appropriate contact person.

J. FALSE COMPLAINTS

1. Complaints that are found to be intentionally or recklessly dishonest or malicious will not be tolerated, and any member, legislative employee, or third party making a false complaint is subject to disciplinary action.

K. POLICY SUMMARY

1. This policy reflects the General Assembly's strong commitment to provide members, legislative employees, and third parties with an environment free from sexual harassment, sexually offensive behavior, and retaliation, and of its commitment to handle all complaints thoroughly and completely, regardless of who brings them or against whom they are brought.