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Legislative Council Policy on Harassment

Harassment prevention and awareness

The Legislative Branch is committed to creating and maintaining a work environment that is free from harassment, including sexual harassment. Harassment undermines the quality of the work environment and the integrity of the employment relationship, destroys morale, interferes with performance, and demeans victims. The Legislative Branch affirms the right under this policy of all Legislators, legislative staff, and others having business with the Legislative Branch, to work in an environment that is free from harassment. Prevention is the best tool to eliminate harassment in the workplace. We strive for harassment prevention through best practices including: a strong leadership commitment to harassment prevention, a stated policy against harassment, effective training, empowering bystanders to intervene, and fostering a respectful and inclusive workplace culture. We are committed to preventing illegal harassment and to identifying and remedying inappropriate behavior if and when it occurs.

The purpose of this policy is to provide information about available internal and external resources, clearly outline the complaint process, identify supervisor responsibilities and comply with legal requirements.

Definitions

1. "Covered person" means:

- Staff, interns and volunteers of the Legislative Branch
- Legislators, and
- Third parties, including the media, lobbyists, contractors, and members of the general public who have business with the Legislative Branch.

It is not the intent under this policy for the Legislative Branch to receive complaints, investigate complaints, or mediate disputes between third parties.

2. "Harassment" means:

Unwelcome conduct that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), and the Americans with Disabilities Act of 1990 (ADA), Genetic Information Nondiscrimination Act of 2008 GINA), Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) or the Maine Human Rights Act. The U.S. Equal Employment Opportunity Commission describes harassment as unlawful when:

> *"1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person*

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would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under those laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws."

3. "Sexual harassment" means:

"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 substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

3. "Supervisor" means:

The Legislative Branch has several trained supervisors who are responsible for appropriately receiving complaints and handling concerns.

Legislative staff, interns or volunteers should report concerns to any trained supervisor listed below:

- Executive Director
- Human Resources Director
- President of the Senate
- Speaker of the House
- Any Caucus Leader
- Any Assistant Caucus Leader
- Clerk of the House
- Assistant Clerk of the House
- Secretary of the Senate
- Assistant Secretary of the Senate
- Any Chief of Staff
- Revisor of Statutes
- Director, Law Library
- Director, Legislative IT
- Director, OFPR
- Director, OPLA
- Director, OPEGA
- Finance Director
- Manager, Legislative Information
- Deputy Director, OPLA
- Deputy Director, Law Library
- Deputy Director, Revisor of Statutes

Legislators should report concerns to any trained supervisor listed below:

- President of the Senate
- Speaker of the House
- Any Caucus Leader
- Any Assistant Caucus Leader
- Clerk of the House (for House members)
- Secretary of the Senate (for Senators)
- Human Resources Director

Third parties should report concerns to any trained supervisor listed below:

- Executive Director
- Human Resources Director
- President of the Senate
- Speaker of the House
- Clerk of the House
- Secretary of the Senate
- Facilities Manager
- Legislative Information Office Manager

What this policy covers

The Legislative Branch affirms the right of all Legislators and legislative staff to work in an environment that is free from harassment and in addition is committed to ensuring that all covered persons can work and do business in a legislative environment free from harassment.

The following are characteristics that are specifically protected in some form under state and/or federal law. Any conduct that degrades, ridicules or otherwise draws unwanted attention to any employee or other person having dealings with the Legislative Branch on the basis of:

- Race
- Color
- Sex (including pregnancy and medical conditions resulting from pregnancy)
- Sexual orientation (including actual or perceived sexual orientation or gender identity/gender expression)
- Marital status
- Physical or mental disability (including current or past disability, perceived disability or association with a disabled person)
- Religion
- Age
- Ancestry or national origin
- Genetic information
- Whistleblower activity
- Military or veteran status (including current or past military service)
- A previous assertion of a claim or right under the Maine Workers' Compensation Act

Harassment is a violation of law and of this policy. Harassment is unacceptable conduct and will not be condoned or tolerated in the workplace.

Examples of harassment

The examples provided below illustrate the types of behaviors that may constitute harassment. Whether behavior constitutes harassment depends on the totality of the circumstances. The examples in this section are not intended to be exhaustive of all behaviors that may violate this policy. Whether an act or series of acts constitutes harassment depends on the relevant facts and must be determined on a case-by-case basis. A single act may or may not constitute harassment and behavior that may be inoffensive in a single instance may, if repeated, become offensive and harassing over time.

Sexual harassment: Examples of sexual harassment can include:

a. Verbal
    - Sexual comments or innuendos about one's clothing, body or sexual activity
    - Discussing sexual topics in the workplace, such as sexual practices or preferences or telling sexual jokes or stories
    - Requesting or demanding sexual favors
    - Repeatedly asking to socialize on or off-duty when an individual has indicated they are not interested;
    - Suggesting that there is any connection between sexual behavior and any term or condition of employment (whether positive or negative)

b. Nonverbal
    - Displaying sexually explicit pictures or objects in the work area
    - Giving gifts of a sexual nature
    - Making sexually suggestive gestures
    - Making unwelcome visits to a home or hotel room
c. Physical
    - Unwelcome hugs or kissing
    - Patting, pinching or intentionally brushing against an individual's body
    - Unwelcome sexual contact or intercourse
    - Sexual assault

Other harassment: Examples based on protected characteristics include, but are not limited to:

- Offensive jokes, slurs or name calling
- Physical assaults, threats or intimidation
- Ridicule or mockery
- Insults or put-downs
- Offensive objects or pictures, or
- Interference with work performance.

Relevant considerations: The examples illustrate behaviors that may be harassment. The following are relevant when considering the circumstances:

- A single incident may or may not be harassment
- Whether an action is considered harassment depends on the circumstances and will be reviewed on a case-by-case basis
- Conduct or communication that is welcome to one person may be unwelcome to another
- Conduct or communication that was welcome between two individuals at one time may become unwelcome later, and
- The individual raising the concern does not have to be the recipient of the behavior, but can be anyone affected by the conduct.

Unprofessional behavior prohibited:

Any behavior of a sexual nature in the workplace is considered unprofessional regardless of whether it constitutes illegal sexual harassment. Similarly, any conduct that degrades, ridicules or otherwise draws unwanted attention to any covered person on the basis of protected characteristics listed above is considered unprofessional regardless of whether it constitutes illegal harassment. Disciplinary action may result regardless of whether the recipient finds the conduct offensive.

Trained supervisor responsibilities

A supervisor must take all concerns brought to the supervisor's attention seriously, provide a supportive environment, and work constructively to address any inappropriate or unprofessional conduct in the workplace.

A supervisor who receives a concern must consult with the Human Resources Director to determine the appropriate course of action. If it is determined in consultation with human resources that the behavior is inappropriate or unprofessional pursuant to other applicable policies but does not rise to the level of illegal harassment, the supervisor must document the information received and summarize discussions held, corrective action plans developed and any implementation and/or follow-up actions taken. A

supervisor must take all reasonable steps to ensure that these records are kept confidential and are not accessible to others.

If it is determined in consultation with human resources that the behavior appears to involve illegal harassment the Human Resources Director will ensure that the matter is addressed in accordance with this policy.

Not following the supervisor responsibilities in this policy will be considered a failure to fulfill the responsibilities of the position and may result in disciplinary action. When in doubt about the seriousness or nature of the behavior reported, a supervisor should discuss the matter with the Human Resources Director.

Seeking advice

Covered persons who experience or witness potentially inappropriate behavior are strongly encouraged to promptly speak to an appropriate, trained supervisor as listed in a previous section or the Human Resources Director. Discussions, information sharing and seeking advice will be kept as confidential as possible. Complete confidentiality in all cases cannot be guaranteed.

Not all reported behavior may meet the definition of illegal harassment, but behavior that raises concerns will always be taken seriously and addressed as needed. If behavior doesn't appear to meet the definition of illegal harassment, other policies relating to the professional behavior of legislative staff may apply. The Human Resources Director can provide guidance on this policy and other applicable policies, assist in identifying ways to resolve the concern and improve the work environment, and also provide guidance on the complaint process if the reported behavior does appear to involve illegal harassment. If the reported behavior appears to involve illegal harassment, investigation and action pursuant to this policy will be required to ensure the harassment stops.

In addition, the Maine Coalition Against Sexual Assault provides a confidential telephone, text and chat resource to discuss questions, concerns and options for those that may have experienced or witnessed sexual harassment or inappropriate behavior. The hotline can be accessed by texting or calling 1-800-871-7741. Visit http://www.mecasa.org for more information.

Complaint and investigation process

Any covered person who believes she or he has been subjected to harassment is strongly encouraged to make a complaint to any supervisor listed previously in this policy, which includes the Human Resources Director. The complaint may be made orally or in writing. Any complaint received by a supervisor requires consultation with the Human Resources Director

If, in consultation with the Human Resources Director, it is determined that the reported behavior may constitute illegal harassment, the Human Resources Director must ensure it is investigated as a complaint under this policy.

Unless circumstances warrant otherwise, investigations and corrective actions are developed in consultation with the relevant supervisors, the Executive Director, and if involving Legislators, with the relevant caucus leader and/or presiding officer. Appropriate and alternative arrangements will be made if the alleged harasser is someone who would normally be involved in the investigation/corrective action process.

Investigations will be prompt, impartial, and thorough. Confidentiality and privacy of affected individuals (complainants, witnesses, and the subject of the complaint) will be protected to the extent possible and permitted by law, consistent with a thorough and impartial investigation. Complainants and the subject of

the complaint will be informed of the resolution of the complaint to the extent permitted under the law. The Human Resources Director must document complaints, investigations and outcomes.

After an investigation, anyone who has been determined to have harassed another in violation of this policy will be subject to appropriate corrective and/or disciplinary action. In the case of legislative staff, this may include termination of employment. For legislators, this may include expulsion. The investigation and corrective action may differ depending on the circumstances of the complaint, in particular, if the complainant or alleged harasser is a third party.

Retaliation prohibited

Retaliation or a threat or suggestion of retaliation against any covered person who makes a complaint in good faith is strictly prohibited. This includes retaliation against individuals who raise concerns, complaints, or those who participate as witnesses or otherwise assist an investigation. Complainants are protected from retaliation regardless of the resolution of the original complaint. Retaliation should be reported in the same manner as described above for harassment complaints and will be promptly investigated. Retaliatory conduct is grounds for disciplinary action, up to and including termination for legislative staff and up to and including expulsion for legislators. Depending on the facts, the following could be retaliation:

- Reprimanding an employee or giving a performance evaluation that is lower than it should be;
- Transferring the employee to a less desirable position;
- Engaging in verbal or physical abuse;
- Threatening to make, or actually making reports to authorities;
- Increasing scrutiny;
- Spreading false rumors; or
- Making the person's work more difficult.

Training

The Legislative Branch will provide in-person harassment prevention training to new and existing legislative staff, interns, volunteers and Legislators at least annually. This includes specific training for supervisors on their obligations. Newly hired legislative staff are required to attend training within 30 days after employment begins. Attendees are required to sign an acknowledgement of understanding this policy. In accordance with state law, registered lobbyists are also required to attend annual in-person training.

Maine Human Rights Commission

In addition to internal reporting mechanisms, legislative staff and Legislators have the right to file a complaint of sexual harassment or other harassment with the Maine Human Rights Commission (MHRC) and the Equal Employment Opportunity Commission. Legislative staff and Legislators are protected by law from retaliation for exercising this right or for aiding an investigation or testifying in any proceedings brought in response to a complaint. Complaints may be filed with the MHRC within 300 days of the date of the alleged harassment by contacting:

Maine Human Rights Commission
19 Union Street (51 State House Station)
Augusta, ME 04333
Phone: (207) 624-6290
https://www.maine.gov/mhrc/

Feedback

The Legislative Branch is committed to continuous improvement of this policy. Feedback on this policy is encouraged and should be provided to the Human Resources Director.

Statutory References:

- 5 MRSA §7070
- 5 MRSA §4553
- 26 MRSA §807
- 3 MRSA §170-B

THIS REVISED POLICY IS ADOPTED BY THE LEGISLATIVE COUNCIL ON THIS 23RD DAY OF MAY, 2019.

BY: _____
Executive Director of the Legislative Council

Authority: 3 MRSA §162 and 25 MRSA §2904

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This policy of the Legislative Council is codified in the *Personnel Policies and Guidelines* handbooks for Legislative employees.