

Policy of the Montana Legislature Prohibiting Discrimination and Harassment (for Legislators)

Adopted by the Legislative Council on August 23, 2018

1. Policy and Objective

A. Right to be free of discrimination or harassment

It is the policy of the Legislative Branch that all participants in the legislative process have the right to be free from discrimination and harassment when participating in the legislative process, whether the offender is an employer, permanent, temporary, short-term, or seasonal division employee or session-only employee, page or intern, legislator, lobbyist, state officer or employee, or member of the public or the media. Federal law, [Title 49, chapter 2, MCA](#) (commonly referred to as the Montana Human Rights Act), and its implementing regulations prohibit discrimination on the basis of race, creed, color, culture, social origin, religion, sex, sexual orientation, age, pregnancy, disability, genetic information, gender identity or expression, marital status, military service or veteran status, citizenship, or any other characteristic protected by law.

It is the policy of the Legislative Branch to encourage prompt reporting of inappropriate behaviors, as provided in section 3, if a person is being subjected to discrimination or harassment by anyone participating in the legislative process. It is the policy of the Legislative Branch to investigate those reports.

The Legislative Branch prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of those reports.

It is the policy of the Legislative Branch to ensure equal employment opportunity without discrimination or harassment on the basis of race, creed, color, culture, social origin, religion, sex, sexual orientation, age, pregnancy, disability, genetic information, gender identity or expression, marital status, military service or veteran status, citizenship, or any other characteristic protected by law. The Legislative Branch prohibits any such discrimination or harassment.

This policy applies to legislator members of the House and Senate of the Montana Legislature. In addition, this policy covers the interaction of and between legislators and others away from the legislative complex in communications and at legislative-sponsored events, professional meetings or seminars, and those activities that involve legislative business. Policies for conduct of permanent, temporary, short-term, and seasonal division employees, House and Senate session employees, and third parties are separate and may be obtained from the Legislative Services Division Human Resources Office.

Nothing in this policy precludes a person from seeking other legal remedies. At any point in the process, if criminal activity is suspected, the matter shall immediately be referred to law enforcement.

B. Discipline

It is the policy of the Montana Legislature to discipline a legislator for substantiated charges of discrimination or harassment of any person in connection with the legislative process. Disciplinary action of a legislator is covered under Section 5 of this policy.

It is the policy of the Montana Legislature to take action with the appropriate authority for a third party, such as an employee, lobbyist, state agency employee, media, vendor or contractor, or member of the public that is reasonably calculated to prevent further harassment from occurring.

Disciplinary action of a legislative branch employee, including permanent, temporary, short-term, or a seasonal division employee, session-only employee, page, or intern is covered under their respective policy. Employees of the executive or judicial branches will be referred to their immediate supervisor, manager, or director to deal with under their respective policies.

Disciplinary action against a member of the public, lobbyist, media, vendor, or contractor who is found to have violated this policy includes any appropriate action authorized by law.

Appropriate action may include notifying the individual's employer, principal, or clients, a protective order, temporary removal from or denying access to legislative buildings or activities, temporarily denying the alleged harasser access to the complainant's workspace, and if appropriate and desired by the complainant, providing additional protective services to the complainant or temporarily changing the complainant's work space or work assignment.

A record of each complaint and resolution shall be maintained by the Legislative Services Division Human Resources Office.

2. Definitions of harassment, retaliation

A. HARASSMENT - Harassment on the basis of any protected characteristic is strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, creed, color, culture, social origin, religion, sex, sexual orientation, age, pregnancy, disability, genetic information, gender identity or expression, marital status, military service or veteran status, citizenship, or any other characteristic protected by law or that of the individual's relatives, friends, or associates and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment, has the purpose or effect of unreasonably interfering with an individual's work performance, or otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes but is not limited to epithets, slurs, or negative stereotyping; threatening, intimidating, or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group and that is placed on walls or elsewhere on the employer's premises or circulated in the workplace.

Sexual harassment constitutes discrimination and is illegal under federal and state laws. For the purposes of this policy, sexual harassment may include unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a legislator when, for example:

1. submission to such conduct is made either explicitly or implicitly a term or condition of rank, privilege, or legislative assignment for a legislator; and
2. that conduct has the purpose or effect of unreasonably interfering with an individual legislator, staff, or third-party's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors

may include but are not limited to unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess, or sexual deficiencies; leering, whistling, or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal, or visual conduct of a sexual nature.

B. RETALIATION - The Legislative Branch prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of those reports.

Retaliation against an individual who in good faith complains or participates in an investigation about sexual or other unlawful harassment is a violation of this policy and is prohibited by state and federal law. Retaliation is a form of harassment and will be handled in the same manner as other forms of harassment.

3. Reporting and Inquiry or Investigation procedure When Alleged Offender Is a Legislator

A person may discuss situations with the Legislative Branch Human Resources Manager or Chief Legal Counsel in the Legislative Services Division to determine whether to make a complaint to one of the leadership listed below.

A person who believes that they have been the subject of any form of discrimination, harassment, or retaliation by a legislator¹ or has witnessed a form of discrimination, harassment, or retaliation by a legislator may report the conduct, by filing a complaint either verbally or in writing, to one of the leadership listed below:

- a. Senate President or Speaker of the House
- b. Senate Majority Leader or Minority Leader or House Majority Leader or Minority Leader;
- c. a Senate Majority or Minority Whip or House Majority or Minority Whip; or
- d. to the Legislative Services Division Human Resource Manager.

A Discrimination or Harassment Complaint Resolution Form is included as an Appendix to this policy. The person receiving the report shall contact the Legislative Services Division Human Resources Manager. It is required for a member of the leadership team who receives a complaint to inform their respective caucus leader and presiding officer of the complaint. The person making the complaint and any person receiving information regarding the complaint shall treat the information in strict confidence and shared only as provided in this policy until such time a conclusion is reached.

¹ Note: If the alleged offender is a Legislative Branch employee, the report may be made to the employee's supervisor, director, or the Legislative Services Human Resource Manager. If the alleged offender is the director the employee should report the conduct to one of the legislators listed above or the Human Resource Manager. If the person alleged to have violated this policy is not a legislator or a legislative branch employee (e.g., a member of the public or the media, executive or judicial branch state employee, a lobbyist, or a vendor or contractor), the person making the complaint or receiving the report shall report it to the Legislative Services Human Resources Manager who will assist in determining to whom the appropriate person is to report.

Nothing in this procedure precludes a complainant from requesting a member of the Legislative Conduct Panel, another legislative leader receiving the complaint, or the Human Resources Manager to first confer informally with the alleged offender to apprise the offender of the complaint and to gain assurance that the offensive conduct will be discontinued. A complainant may withdraw a complaint at any time, but the Human Resources Manager shall maintain the documentation.

The Human Resources Manager shall document the complaint and contact the Legislative Conduct Panel which consists of the Senate President, Speaker of the House, the Senate Minority Leader, and the House Minority Leader. If one of the leaders is the subject of the complaint, is the complainant, requests recusal for a conflict of interest, or is not available, the Pro Tempore or Minority Whip of the same caucus shall serve as the replacement or appoint a designee. The Human Resources Manager shall report back to the complainant that the complaint was received, documented, and provided to the Legislative Conduct Panel.

The Legislative Conduct Panel must convene within 3 business days during session or within 15 business days during the interim to discuss the complaint and allegation and conduct a preliminary inquiry with the assistance of the Human Resource Manager and the Chief Legal Counsel. The Legislative Conduct Panel's discussions and inquiries are considered closed personnel investigations until such time as a final resolution of a substantiated claim is reached. The Chief Legal Counsel and Human Resources Manager will staff the panel and assist the Legislative Conduct Panel to convene.

The preliminary inquiry may result in a determination whether the complaint:

1. is frivolous and no action must be taken;
2. has merit and a resolution may be made without further investigation; or
3. has merit and a third-party investigation is necessary.

The procedure for inquiry or investigation into a discrimination or harassment report may include but is not limited to:

1. securing a statement from the person reporting the discrimination or harassment and from the subject of the complaint;
2. holding individual interviews or group meetings;
3. weighing the facts;
4. applying pertinent laws, rules, policies, or practices to the facts surrounding the report of harassment.

After the preliminary inquiry, if a third-party investigation is determined to be necessary or if a consensus of the Legislative Conduct Panel cannot be reached, the third-party investigation shall be conducted by a person who is experienced in employment law and in the investigation of claims of discrimination or harassment. The Chief Legal Counsel or appropriate designee shall procure assistance from persons outside the branch as needed in a timely manner. The Human Resources Manager may provide the complainant updates of the status of the process.

The results of a third-party investigation must be provided to the Legislative Conduct Panel who will make a recommendation for appropriate corrective action to the appropriate authority as provided in Section 6.

A person making a complaint may at any time file a complaint with the Montana Human Rights Commission as provided in Title 49, chapter 2, MCA. Montana Human Rights Bureau, 33 S. Last Chance Gulch, Suite 2, P.O. Box 1728, Helena, MT 59624, (406) 444-4356, (800) 542-0807, Montana Relay Service 711.

4. Records and Confidentiality

There is a compelling state interest in the elimination of discrimination and harassment in Montana pursuant to Art. II, sec. 4 of the Montana Constitution (1972). In some cases, the interest of a person in viewing material related to a complaint or gathered as part of the investigation will compete with individual privacy interests. A legislator is in a position of public trust and the public must trust that a legislator is fit to perform the legislator's duties. This is balanced with need to maintain integrity in the legislative process in a political environment.

A record of each complaint and resolution shall be maintained by the Legislative Services Division. If the result of the preliminary inquiry or investigation is a finding that the charge of discrimination or harassment is frivolous or is not substantiated, a copy of the finding must be placed in the confidential human resources file in the Legislative Services Division Human Resources Office.

Until final disposition of a substantiated claim, all information will be maintained on a confidential basis to the greatest extent possible in order to protect victims' or witnesses' privacy. Only those who need to know in order to accomplish the purpose of the investigation shall be provided with the identity of the complainant and the allegations. All parties, including the complainant and the alleged harasser, contacted in the course of an investigation shall be advised of the necessity of confidentiality .

Corrective action and confidentiality regarding members are constitutionally limited with regard to formal discipline, censure, or expulsion.

In order to balance the public's right to know and individual privacy interests, the Legislative Services Division, on behalf of the Legislative Branch, will take the following steps upon receiving a request for information:

1. When a person requests information or materials for which an individual right of privacy has been asserted or might be asserted, Legislative Services Division will contact the parties, including the name of the member in the complaint, the complainant, and those who have been treated as witnesses, and provide them an opportunity to object to the release of this information.

2. If there is an objection to the release of information, and the request is prior to a final disposition of a substantiated claim, the requestor will receive a redacted document based on the privacy rights upheld/claimed.

Except for records made public in the course of a hearing held under Joint Rule 10-85 and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the Legislative Conduct Panel in connection with an investigation or complaint are confidential documents and are not open for public inspection until the completion of its investigation if the release of information would threaten the integrity of a pending investigation. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties until a decision is issued.

However, the complainant, person who is the subject of a complaint, or a witness may waive, in writing, the right of confidentiality of their own identifying information provided in this subsection. If a waiver is filed with the Human Resources Manager by the complainant, the person who is the subject of the complaint, or a witness, the information in the complaint and any related documents regarding the person who has waived confidentiality must be open for public inspection. The decision issued after investigation, with the complainant's and witnesses' identities redacted, is a public record open to inspection.

5. Findings, Discipline, and Corrective Action

After an investigation, the Legislative Conduct Panel must make a determination of the appropriate action. The Legislative Conduct Panel must take into consideration the best interests of the complainant.

If the result of the inquiry is a finding that the charge of discrimination or harassment is substantiated and the offender is a legislator, the Legislative Conduct Panel shall ensure that actions recommended to be taken must be under the purview and authority of the person or body imposing the sanction, i.e. Speaker, President, Committee on Committees, or [the Ethics Committee].

The Legislative Conduct Panel shall make a recommendation to the appropriate authority or to the [Ethics Committee] for corrective action. The Legislative Conduct Panel shall inform the complainant and the legislator against whom the complaint was made of the recommendation.

Corrective actions may include, but are not limited to those outlined below:

A. The Legislative Conduct Panel may recommend corrective actions such as training, referral to counseling, disciplinary action, or denying access to the complainant as determined to be appropriate under the circumstances. If an offender refuses to comply, the Legislative Conduct Panel may reconvene for further determination.

Any corrective actions required of the legislator by the Legislative Conduct Panel or other authority must be documented and filed with the Human Resources Manager. Completion of corrective actions must be documented by the authority imposing the corrective action and must be reported back to the Human Resources Manager.

B. The Legislative Conduct Panel may recommend that the Speaker or Committee on Committees remove a legislator from a committee assignment or chair position.

C. The Legislative Conduct Panel may refer the matter to the [Ethics Committee] of the applicable chamber, for determination whether the offending legislator is subject to discipline, censure, or expulsion, as appropriate.

The [Ethics Committee] shall hear the matter in accordance with its procedures and make a recommendation to the body. Formal charges require a hearing by the [Ethics Committee] on the complaint and a formal vote ranging from no action as appropriate because no improper conduct occurred to a finding that improper conduct was found by clear and convincing [high legal standard] evidence as to warrant formal discipline. The member who is charged, shall be informed in writing by the committee chair of the presentation of the charge or charges in the committee report to the appropriate chamber and be given an opportunity to be heard in the

member's own defense. The [Ethics Committee] shall ensure that the victim has a role in the hearing.

The appropriate chamber, by a majority vote, may dismiss the charge or charges without a hearing, or with notice and an opportunity to be heard in the member's own defense, censure a member or, upon a two-thirds vote of all the members of the appropriate chamber, discipline or expel a member.

D. The Legislative Conduct Panel may take any other action that may be considered appropriate, including referral to law enforcement.

6. Training

Participation in training on discrimination and harassment prevention shall be provided for all legislators and presiding officers, and is mandatory for all permanent branch staff and House and Senate staff, including pages and aides. Training will be offered on an annual basis for permanent staff and prior to or at the beginning of each regular legislative session. Training will include legal concepts underlying discrimination and harassment law, expectations for the positive culture of the Legislative Branch, and discussion and examples of appropriate and inappropriate behaviors.