

Answers to Survey Questions for the Draft Sexual and Other Workplace Harassment Policy

Sexual Harassment Defined and Examples of Sexual Harassment (Page 1)

1. Why are sexual orientation, LGBTQ, sexuality, or transgender not included in the definition of sexual harassment?

Currently, the Equal Employment Opportunity Commission (EEOC) considers discrimination based on “sex” as covering issues for lesbian, gay, bisexual, and transgender (LGBT). The policy does state that discrimination based on “sex” is illegal, so that would cover the LGBT as described by the EEOC.

2. Why is only illegal discrimination contained in the policy? Shouldn't all discrimination be included in the policy?

The definition of discrimination is “treating a person or particular group of people differently.” There are situations where this may be appropriate, such as hiring an attorney. In hiring any attorney, you only want to consider applicants who are licensed to practice law in the State of Alaska. In this scenario, you are discriminating against individuals who have not passed the Alaska Bar exam. That form of discrimination should not be part of our policy.

3. It does not look like there is a timeline for filing a complaint?

The Legislature wants to learn about all the complaints. If a significant amount of time has passed since the time of the incident, it may be difficult to investigate, however, that does not mean the knowledge will not help the Legislature in the future. Also, there are already three timelines for filing a complaint:

- Alaska Commission on Human Rights (HRC) has a one hundred and eighty (180) day timeline for filing a complaint.
- The Equal Employment Opportunity Commission (EEOC) has a three hundred (300) day timeline for filing a complaint.
- Alaska Statute 09.10.070 has a two (2) year timeline for filing a tort complaint.

Retaliation Prohibited (Page 2)

1. Use examples that are from EEOC and not additional examples (Disparaging the person to others or in the media was the example given).

Most of the examples in this section are from the EEOC guidelines regarding retaliation towards an employee or witness. The example of disparaging the person to others or in the media was placed in the policy because of the unique environment within the Legislative Branch. The committee included this example because there are opportunities for individuals to utilize the media in a manner that could be considered retaliation. It is the hope of the committee that including this example may assist employees in understanding and avoiding this type of situation.

- 2. Should be clear that having a complaint filed against you that is currently being investigated should not be grounds for dismissal.**

Each complaint is to be taken on a case-by-case basis. In situations where the conduct may be severe or pervasive, there needs to be flexibility for the appointing authority to act. A criminal act that is being investigated by law enforcement may be one example that is severe enough for a presiding officer to act before an internal investigation is complete. Another example could be if there have been multiple complaints against an employee that have been substantiated. This could be an example of a pervasive situation where the employee is continuing the harassment activities, so an appointing authority may feel they need to act immediately.

Hostile Work Environment Prohibited (Page 2)

- 1. “Bullies” and belittling should be considered hostile work environment examples.**

Hostile work environment and sexual harassment are defined in the policy. The concept of bullying and belittling may or may not fall within these definitions depending on specific situations. That is why all complaints are taken seriously and investigated.

- 2. Wanted a list of hostile work environment behaviors, similar to the examples of sexual harassment listed on page one.**

The examples of sexual harassment are the actions that could create a hostile work environment if they are either pervasive or severe. In order to avoid a lengthy policy, we only put the examples on the first page.

If you witness or Experience Harassment (Page 3)

- 1. When someone reports witnessing an event do they become involved and get protection from retaliation?**

Yes, witnesses are protected by the retaliation section of the policy.

- 2. Policy should only strongly encourage witnesses or affected parties to report, but not require it.**

The policy does not require an individual to report alleged harassment.

- 3. Paragraph 2, “If you are unsure of what type of procedure to pursue...” Expand who they should contact, not just the LAA HRM, but include manager, designated staff, etc.**

The committee wanted to keep the advice consistent and wanted a single point of contact to ensure that people received the assistance they needed. Also, this section is not just for the subject of the harassment. A supervisor, manager, designated staff, etc. could also contact the LAA Human Resources Manager for advice on how to proceed.

Informal Reporting Procedure (Page 3)**1. Not clear how the informal process will stop harassment.**

The informal process is designed to be an unobtrusive conversation regarding conduct of an individual that another may find inappropriate. This conversation will be reported to the LAA Human Resources Manager with a report that describes how the situation was resolved. If the alleged harasser continues the behavior, then the complainant may ask for a formal investigation of the conduct, and the informal report will be documentation that the complainant tried to work it out informally.

2. Does the alleged harasser know who filed the complaint?

Generally, yes. For an alleged harasser to stop specific behavior towards an individual, they need to know who that individual is. However, sometimes a complaint is brought by a third party who witnessed an event, so only the identity of the subject of the harassment may be disclosed.

3. Can the alleged harasser convert an informal report to a formal report to trigger an investigation?

The policy specifically provides that a “subject of alleged harassment may request an informal report be converted into a formal report at any time.” However, anyone can file a formal complaint. It does not need to be the alleged victim.

4. Include designated staff in paragraph 3 regarding receiving an informal report.

The informal complaint process is designed to work out issues within a small group of people that does not need the attention of a formal investigation. In these scenarios, the committee felt it was appropriate for senior staff, supervisors, manager and/or Legislators to be the point of contact. It is also important to note that the Chief Clerk, Senate Secretary, LAA Human Resources Manager, and staff of the Presiding Officer’s office are managers or supervisors so they would fit into the category of someone to contact for an informal.

5. Clarification on who the person is submitting the informal report to LAA Personnel when the complainant is to be kept confidential.

The person who is submitting the informal report to LAA Personnel Office would be a supervisor, manager, or Legislator. They do not need to put the complainant’s name on the form as long as the person submitting the informal report is clearly identified. If there is a need to contact the complainant, the LAA Human Resources Manager would work through the supervisor, manager, or Legislator that submitted the report. This way the complainant can be kept confidential.

Formal reporting procedure (Page 4)

- 1. Several concerns regarding who an employee can file a formal complaint with.**
 - a. Remove Senate Secretary and Chief Clerk's office as someone who you can file a report with.**
 - b. Expand the list of designated staff to include more than just Senate Secretary and Chief Clerk.**
 - c. Have LAA HRM be the only one you can file a formal report to.**

There were several requests to either expand the list of designated staff or to simplify it. The comments in the survey mirrored the discussions in the committee on this topic. In the end, the committee decided that for formal complaints only a select few individuals would be appropriate. The Chief Clerk and Senate Secretary's offices were selected because they are politically neutral.

- 2. As an Alternate to LAA HRM should use LAA Exec Director. May be conflict of Personnel Staff investigating HRM.**

This alternative already exists the hierarchy of the agency. In any situation within Legislative Affairs Agency, if an employee or legislator feels there is a conflict of interest, they can discuss this with the LAA Executive Director. The LAA Executive Director does have the ability to direct or redirect the work of the anyone in the LAA Personnel office, including the LAA Human Resources Manager.

- 3. Include the intranet web site where the specific designate staff and their contact numbers are listed.**

We updated the intranet web site earlier this year. You can find the website on the LAA Personnel Office intranet site under "Sexual and Other Workplace Harassment Reporting Process" link. The URL is: <http://intranet.akleg.gov/personnel/Harassment.php>

- 4. Alleged harasser should be informed of their rights and the process of the investigation.**

The policy provides the process for both the alleged harasser and the complainant. It also has two places where both are allowed to express their concerns or appeal the findings of the report.

Reports of investigations involving a legislator (Page 4)

- 1. Concern that unless a legislator resigns there is not a process to expel them.**

According to the Constitution of the State of Alaska, the body may expel a member; therefore the process for removing a legislator from service already exists.

- 2. Independent investigator process seems complicated and confusing who can request one.**

An independent investigator can be requested by the LAA Human Resources Manager. For reports concerning a Legislator, the Presiding Officer or the Minority Leader can request an independent investigator.

Investigations (Page 4)

1. If LAA HRM is accused of harassment, who hires the investigator, the LAA Exec Director?

Yes, the LAA Executive Director is the appointing authority over the LAA Human Resources Manager.

2. Are there provisions for appointing an interim supervisor during the course of the investigation?

When a formal complaint is filed, the LAA Human Resources Manager works with the supervisor and appointing authority to ensure the complainant has a safe work environment. Appointing an interim supervisor may be one of these options.

3. Have all the information collected as part of the investigation must be part of the report.

Some individuals identified as potential witnesses may not have seen anything but are interviewed only because they were in the vicinity at a specific time. These individuals do not need to be identified, as it is not always appropriate to include their information.

4. Independent investigator should be the go-to solution for all formal investigations. Keep the investigation void of partisan political influence.

The committee felt it was appropriate to utilize the services of the nonpartisan Legislative Affairs Agency, Human Resources Manager as the main investigator. This position is trained to perform investigations and is familiar with the Alaska Legislature. By using a nonpartisan LAA investigator, we can ensure a timely and efficient investigation. The committee also realizes there are times where an independent investigator who is outside the Legislative Branch may be necessary. Therefore, the policy provides flexibility to utilize an independent investigator.

5. The mix of calendar and business days is confusing.

This was a deliberate decision. The committee wanted to make sure the timeline for an investigation was set and not easily manipulated. The concern was that an individual could stall the investigative timeline if calendar days and business days were not specified. The idea was to enable a quick and through investigation.

Final Reports and Disciplinary Action (Page 5)

1. The policy states the report will be provided to the appropriate manager or supervisor, what if the alleged harasser is the manager or supervisor?

If the supervisor or the manager is the alleged harasser, the report will be provided to the appointing authority. If the alleged harasser is the appointing authority, then the report will be provided to the individual who has authority. E.g. if the complaint is against the presiding officer, then the report will be provided to the majority leader of that chamber.

2. How do you handle providing a report to a victim or alleged harasser if they have left employment?

If the alleged harasser is no longer employed, there is no action the Legislature can take to remedy the situation because the situation no longer exists. The policy requests timely reporting to avoid this issue.

Appeals (Page 5)

1. Why can't an employee get a hearing in front of a committee like a Legislator?

An employee can appeal and get a hearing through their next level supervisor, where a Legislator cannot. The Rules Committee acts as the administrative arm of the chamber. Since the Constitution of the State of Alaska states only the chamber can discipline their members, it is appropriate that a Legislator can appeal to their administrative body.

2. Do witnesses have any right to discuss any dissatisfaction?

The policy is created to end harassment towards the victim. A witness would not have standing on what is a satisfactory resolution to a report. A witness does have protections from retaliation claims.

3. Appeals process not clear if someone has a conflict of interest by either being on the Rules Committee or being associated with the rules committee.

Conflicts of interest may occur, and it would be up to the chamber to address those conflicts, so as not to impede the integrity of the investigatory report.

Confidentiality (Page 6)

1. Victims' name should be withheld when reports are released to the press.

Investigative reports written by the LAA Personnel Office generally do not have victims' name included. When it comes to an outside investigator, they have their own policies and procedures, and the Legislature has less control on the report they receive.

2. Should there not be a scenario in which reports for staff could be released by the Rules Committee?

There is a public interest aspect related to complaints filed against elected officials since the elected official works for their constituents. The release of reports by the Rules Committee requires weighing the public interest with the privacy interests of those identified in the report. Legislative employees do not present the same level of public interest.

3. Reports should not be made public if there is an appeal in process.

An investigatory report is not released unless it is final. The report would not be considered final under this policy until after it has gone through the entire process, including the appeals process.

4. Does not seem to have a requirement for anyone other than the LAA HRM to keep the report confidential.

The policy states that all reports, including informal, formal, draft and final reports are considered, and must be treated, as confidential under Legislative Council Records Policy--except that the appropriate Rules Committee may consider release of all or a portion of a final report involving a Legislator.

Ethical Duties and Training (Page 6)

1. Include just a section in the ethics training, not a separate 3-hour training.

The policy does not specify the length of the training, it just specifies that training for Sexual and Other Workplace Harassment must be included as a component of the ethics course.

2. Explain that all SOA legislative employees/volunteers will receive Sexual Harassment Prevention training annually at a minimum and refresher's training as necessary. As it is written, it is not very clear or is too vague. Clearly define how many and when an employee needs to attend training.

The training required under this policy must comply with the AS 24.60.155, which requires training at the beginning of the first regular session of each legislature.

General Policy Questions:

1. Examples are broad and/or subjective. (multiple comments on this topic, some are outlined below)

- a. The examples such as impeding or blocking movement; intimate inquiry; unwanted closeness; unwanted courting are subjective and broad terms.
- b. "Gender Stereotype" has broad meaning and not all use of this term may be considered an instance of harassment.
- c. Examples of retaliation are very broad and could easily be misinterpreted by a victim.

There is a reason the EEOC uses broad and subjective terms when talking about actions that may be inappropriate. Each situation needs to be taken on a case by case basis. One person may perceive an issue differently from another, and a comment or action that would offend one person may not offend someone else. We don't want an employee to feel that they cannot discuss an issue that makes them feel uncomfortable as a result of narrow definitions or examples. Therefore, all complaints must be taken seriously and investigated to determine how a reasonable person would have perceived the situation.

2. What are the consequences for the complainant (remedy for the alleged harasser) if the complaint is found to be unsubstantiated (they used the term false)?

The committee members had to balance their concerns about false complaints with the need to not discourage employees from filing complaints. Also an unsubstantiated complaint does not mean it is a false complaint.

3. How is a complainant protected from a supervisor whom they filed a complaint against?

When a formal complaint is filed, the LAA Human Resources Manager works with the supervisor and appointing authority to ensure the complainant has a safe work environment.

4. Does standing committees include all special committees as well?

Yes. Staff for special committees are hired through the Rules Committees during interim and Presiding Officers during session, so they would be treated the same as standing committees.