



Alaska State Legislature

Sexual and Other Workplace Harassment Subcommittee

February 8, 2018

Discussion Points and Recommendations

5. Appeals

Many subcommittee members wanted a more defined appeal process, however not a lot of detail was provided. Questions to consider:

1. Should there be a right to appeal/who should have a right to appeal?
2. What needs to be included in the process?
3. Who should decide the appeal?

Legislative Legal has provided a memorandum on this topic (attached) which will be discussed at the meeting.

6. Sanctions

There were differing opinions on what sanctions should be allowable, who should decide, and how appropriate sanctions should be determined. As noted in committee, since these complaints are fact-driven, defining specific sanctions for particular offenses is not advisable, however a policy should also ensure that sanctions are not arbitrary to avoid retaliation through sanctions or the appearance of retaliation. Questions to consider:

1. How specific should the policy be regarding available sanctions vs. how much discretion should be retained to address unique situations?
2. What are appropriate sanctions for legislators?
3. What are appropriate sanctions for employees? Should there be a distinction between agency (nonpartisan) employees and legislative employees?
4. Should the policy include consequences for non-employees that conduct business with the legislature (vendors, lobbyists, etc.)?

Options:

1. Sanctions should not be specified but should be at the discretion of the appropriate authority, similar to current Alaska Policy.
2. Sanctions and the process should be specified but allow a certain amount of discretion by the appropriate authority, similar to draft dated 1/25/2018 which includes “other disciplinary actions deemed appropriate.”
3. All available sanctions should be specified (not recommended).

7. Sanction Process

Members requested that a more specific process be included in the policy, based on the Oregon policy. This process was included in the policy draft dated 1/25/2019 and is outlined below for the committee. Questions to consider:

1. Should a committee determine appropriate sanctions or should an individual (Rules Chair, Presiding Officer, Appointing Authority) have sole discretion?
2. If a committee process is preferred, should a new committee be appointed, or should it be the purview of the existing Rules committees?
3. Should the process be different for legislators and staff?

Draft Process for legislators, based on 1/25/2018 draft:

1. Special Committee on Conduct created to determine appropriate sanctions – makeup of committee outlined in policy (OR use existing Rules Committee).
2. Final investigation report is forwarded Special Committee.
3. Special Committee holds a public hearing – timelines outlined in policy (between 14-45 days); witnesses and attorneys allowed.
4. Special Committee makes recommendations, which can include:
 - o Reprimand;
 - o Censure;
 - o Expulsion;
 - o Removal or reduction of staffing allotment,
 - o Removal or reduction of travel privileges,
 - o Other disciplinary actions deemed appropriate, or
 - o That the committee take no further action.
5. Complainant and alleged harasser have 10 days to request review.
6. Committee's recommendation sent to full body; sanction, except expulsion, must be adopted by majority vote. Expulsion procedure is already outlined in the Constitution and Uniform Rules.

Draft Process for non-legislators presented 1/25/2018:

1. Final report given to appointing authority.
2. The appointing authority shall "act on the final report as soon as practicable after receipt."
3. No specific sanctions mentioned in that section of policy, but the policy does state in another section that "employees engaging in harassing conduct in violation of this policy may be subject to disciplinary action, including dismissal."

8. False Complaints & Retaliation

Many subcommittee members wanted a process to address false complaints and pointed to language in the Colorado policy:

FALSE COMPLAINTS - Complaints of workplace harassment that are found to be intentionally or recklessly dishonest or malicious will not be tolerated.

However, in some cases employer allegations of false complaints have been found to be illegal retaliation, even if the employer has a “good faith belief that the testimony against the employer is false.”

Alaska State Commission for Human Rights v. Goldstream General Store.
OAHWO.11-0024-HRC (August 10, 2011). The finding states:

“The Alaska Legislature has established a broad public policy against many forms of discrimination. It has explicitly prohibited retaliation by an employer against a person who has testified in a hearing concerning employment discrimination. This prohibition would be severely abridged, however, if an employer could retaliate against a person based only on the employer’s own belief that the individual’s testimony was false. Many employers defending against any charge of discrimination will have a good faith belief that the testimony against the employer is false in some material respect. Many people would be afraid to testify in a hearing if by doing so they risked an adverse employment action, or other form of retaliation. And the fear of retaliation would be justified if retaliation were permitted based solely on the employer’s determination that the testimony had been false. Alaska Statute AS 18.80.220(a)(4) does not provide an exception for retaliation based on a belief that the testimony was false, and the statute should not be interpreted to include such exemption.”

Questions to consider:

1. Can a policy be written to prohibit or provide consequences for false complaints that doesn’t expose the legislature to a retaliation claim?
2. How can the policy balance consequences for false accusations without any “chilling effect” on reporting?
3. What should be the burden of proof?
4. What should be possible sanctions?

Recommendation: The Chair recommends that language regarding false complaints not be included in the policy.