



Alaska State Legislature Sexual and Other Workplace Harassment Subcommittee

February 10, 2018 Discussion Points and Recommendations

6. Sanctions & 7. Sanctions Process

Based on the committee discussion on February 8, 2018, an outline of the investigation and sanction process have been distributed. The Chair's recommendation is to follow the current process and precedent as much as possible.

1. Sanctions will be decided by:
 - a. Appointing Authorities for their respective staff;
 - b. Presiding Officers for legislators in their caucus and unaffiliated legislators;
 - c. Minority Leaders for legislators in the minority caucus.
2. Policy allows for maximum discretion for available sanctions, while listing a few possible sanctions for more egregious violations.
3. No appeal process is included for sanctions.
4. Consequences for non-employees that conduct business with the legislature (vendors, lobbyists, etc.) have not yet been discussed and are not included at this time. Should these be included? If yes, what are appropriate corrective actions?

NOTE: The draft timelines did not receive much feedback from subcommittee members, therefore were not included on the workplan. The timelines presented on the outline are based on the Oregon policy with feedback from our Human Resources Manager.

Our legal counsel cautions against including specific timelines in the policy and will speak to those concerns during committee.

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.



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Reporting and Investigation Process Outline

February 9, 2018

- All reports and complaints will be taken seriously and investigated to determine if there has been a violation of this policy.
- When a complaint is received, the alleged harasser(s) and the respective appointing authority will be notified. At that time, the appointing authority will determine if the investigation is handled by the LAA Human Resources Manager or an outside independent investigator.
- Process for informal reports will be outlined as follows:
 - Designated staff will be listed and receive additional training.
 - Designated staff and supervisors, including legislators, who receive an informal report will forward that report to the LAA Human Resources Manager.
 - If the conduct in an informal report is addressed by designated staff, a supervisor, or a legislator, a report including a description of the complaint, the names of the parties, and the corrective actions taken will be submitted to the LAA Human Resources Manager.
 - The name of the complainant can be kept anonymous as long as the individual submitting the report is identified.
 - The LAA Human Resources Manager will keep confidential records of all informal reports received.
 - Timelines for the informal reporting process will not be outlined in the policy as these are dependent on the facts of the case and likely will be dispensed with quickly by the LAA Human Resources Manager.
- The LAA Human Resources Manager will have the ability to encourage a claimant to file a formal report for more egregious behavior or to initiate a formal report and investigation.
- Reports and investigations will be kept confidential to the extent possible.
- All members and employees involved in the investigation shall cooperate with the investigation and keep information regarding the investigation confidential.

Proposed Timelines for Formal Investigations:

Committee members should discuss whether timelines should be

- Investigator will be assigned within 10 days of the LAA Personnel Office receiving or initiating a formal complaint.
- LAA HRM or designee will be default investigator, but an outside investigator can be used:
 - upon the recommendation of the LAA Human Resources Manager; or
 - upon request of the appointing authority.

- The timeline for investigations is as follows:
 - Within 30 days of the investigator being assigned: draft report completed and presented to the complainant, all alleged harasser(s), and, in the event of an independent investigation, the LAA Human Resources Manager. the LAA Human Resources Manager can grant an extension.
 - Each party has ten (10) days to provide comments, suggested edits, and/or provide a written request to the investigator to modify the findings of fact, which must include the reason for the requested modification. Modifications will be at the discretion of the investigator.
 - After the comment period, the investigator will have ten (10) days to finalize the report and submit it to the appropriate appointing authority of the alleged harasser and claimant, in the case of an independent investigator, to the LAA Human Resources Manager.
 - The appointing authority will immediately present the report to the alleged harasser and claimant.
 - In a formal report involving a legislator, the claimant or alleged harasser has five (5) days to ask for a hearing before the alleged harasser's Rules Committee to appeal the interpretation of the facts or report conclusions.
 - In a formal report involving an employee, the claimant or alleged harasser can appeal to the appropriate appointing authority.

Final Reports and Disciplinary Actions:

Final investigative reports will be distributed to:

- For an employee, to his/her respective appointing authority;
- For a legislator, to his/her respective appointing authority and presiding officer.

If an investigation reveals conduct in violation of this policy, the appropriate appointing authority will determine any appropriate corrective or disciplinary action.

An employee that is found to be in violation of this policy may be subject to disciplinary action, up to and including dismissal.

A legislator that is found to be in violation of this policy may be subject to disciplinary actions deemed appropriate by their appointing authority. For more serious violations, a formal reprimand, censure, or expulsion may be recommended, subject to approval by their respective body as outlined in the Uniform Rules, Alaska Law, and the Constitution of the State of Alaska.