

#### OPTION #4

### Management Council Policy 02-02

Subject: **Anti-Discrimination and Sexual Harassment**

(Source Notes: MC Minutes 10/08/2002, 2/10/2018, 12/5/2018)

## **ANTI-DISCRIMINATION AND SEXUAL HARASSMENT POLICY**

### **I. Statement of Policy and Applicability**

The Wyoming State Legislature strongly disapproves of and does not tolerate discrimination or harassment. Any form of discrimination or harassment ~~based on a protected characteristic of an individual including, but not limited to, race, religion, color, sex, sexual orientation, gender identity, national origin, age or disability,~~ is a violation of this policy. All complaints or reports of discrimination or harassment shall be promptly investigated. If a complaint or report is found to constitute discrimination or harassment in violation of this policy, appropriate corrective action shall be taken.

Except as provided herein, this policy applies to members and employees of the Legislature and covers their interactions when in session and at all other times they are acting in their official capacity as a member or employee of the Legislature, including at interim committee meetings across the State and legislative conferences across the country. This policy also applies to complaints or reports of discrimination or harassment made by third parties who are observing in person or doing business with the Legislature.

This policy does not apply to legislator conduct which would qualify for protection under Article 3, Section 16 or similar protection contained in the Constitution of the United States.

This policy does not create or extend legal rights, classes or causes of action not established by federal or state of Wyoming law.

### **II. Definitions**

- A. "Complaint" means an account of conduct which may violate this policy and for which corrective action is appropriate against a person who committed discrimination or harassment, if substantiated.
- B. "Employee" includes LSO staff, session staff, interns and pages.
- C. "Member" means a current Wyoming state legislator and includes any appointee or person newly elected in a general election to the Legislature.

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- D. "Report" means the reporting of an incident or conduct by a person to either seek guidance on whether the incident or conduct violates this policy or to document the incident or conduct for the purpose of creating a record in the event the conduct or incidents continue or the reported behavior becomes more egregious or demonstrates a repeated pattern of conduct.
- E. "Third party" includes any elected official, or employee of the Executive or Judicial branches of state government, member of the media, lobbyist and member of the public.

### **III. Prohibited Conduct**

The following conduct is prohibited under this policy:

#### A. Discrimination or harassment:

- 1. Discrimination or harassment means any conduct ~~based on a protected characteristic of an individual~~ that violates state or federal law by:
  - ~~(a) Denigrates or shows hostility toward the individual because of that protected characteristic; or~~
  - ~~(b) (a)~~ Substantially ~~interferes~~ interfering with or ~~affects the~~ affecting an individual's work performance, employment, term or condition of ~~the~~ an individual's employment or business with the Legislature; or
  - ~~(c) (b)~~ Creates Creating an intimidating, hostile or offensive environment in the Legislature.
- 2. Civil discussion of controversial topics within the public discourse does not constitute discrimination or harassment.

#### B. Sexual Harassment:

- 1. Sexual harassment is a form of sex discrimination.
- 2. Sexual harassment means any unwelcome sexual advances, requests for sexual favors, comments of a sexual nature, unwelcome touching and other conduct of a sexual nature when:
  - (a) Submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment or ability to conduct business with the Legislature; or

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- (b) Submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual; or
  - (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile or offensive environment.
- C. Retaliation against any member, employee or third party who has lodged a complaint, filed a report, testified, assisted or participated in any manner in an investigation under this policy.
- D. Any other conduct that violates applicable federal or state anti-discrimination law.

#### **IV. Procedures to Lodge a Complaint or File a Report**

Any member, employee or third party may lodge a complaint or file a report as provided in this section. Complaints and reports may be provided in written form or may be verbally communicated. Complaints and reports shall include as much information as possible about the offending conduct, including the nature of the conduct, the date, time and location where the conduct occurred, frequency of the conduct and information about persons who may have witnessed the conduct. The person responsible for investigating the complaint or report under section V. of this policy, shall document receipt of the complaint or report by providing written acknowledgement to the person lodging the complaint or filing the report.

Before or in addition to lodging a complaint or filing a report, a member, employee or third party may, if he or she desires, notify the person of the unwelcome conduct and request that the conduct stop immediately.

- A. Complaints or reports against a member or an employee.
  - 1. Any member, employee or third party who believes that he or she has been discriminated against or harassed by a member or an employee should lodge a complaint or file a report. The person may lodge a complaint or file a report with the person's supervisor, the House or Senate chief clerk, the presiding officer of the House or Senate, or to the LSO director or the director's designee.
  - 2. Any person listed in IV. A. 1. receiving a complaint or a report against a member or an employee, or any other person who suspects discrimination or harassment by a member or an employee, shall immediately report the conduct to the person responsible for investigating the complaint or report under section V. of this policy.
- B. Any member, employee or third party who believes that he or she has been discriminated against or harassed in the legislative setting by a non-member or non-employee should

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report the conduct to the person's supervisor, the House or Senate chief clerk, the presiding officer of the House or Senate, or to the LSO director or the director's designee.

- C. The LSO director or the director's designee shall maintain a confidential file of all complaints and reports under this policy.

### **V. Investigations**

All complaints or reports of discrimination or harassment prohibited by this policy shall be investigated as soon as possible after the conduct is reported or suspected.

- A. Complaints or reports against a member shall be investigated as follows:

1. The presiding officer of the house of the member alleged to have committed discrimination or harassment, or that presiding officer's designee, shall communicate with the person who lodged the complaint or filed the report to explain the procedures for investigations under this policy and for investigations under Joint Rule 22-1 of the Joint Rules of the House and Senate. The presiding officer or designee shall ask whether the person would like the complaint to be addressed under this policy or under Joint Rule 22-1.
2. Deference shall be given to the person's preference regarding how the complaint should be addressed unless it is determined by the presiding officer, after consultation with the majority and minority floor leaders, that the conduct of the member arises to the level of legislative misconduct as defined in Joint Rule 22-1 and that an investigation under that joint rule is required.
3. Investigations under this policy against a member shall be conducted by the presiding officer of the house of the member alleged to have committed discrimination or harassment. Three members of the Senate or three members of the House, as applicable, may be designated by the presiding officer to participate in the investigation.
4. If a complaint is against a presiding officer, then the duties of the presiding officer under this subsection shall be the duties of the Senate Vice-President or the House Speaker Pro Tem.

- B. Complaints and reports against an LSO employee shall be investigated by the LSO director. Complaints and reports against a House employee shall be investigated by the chief clerk of the House. Complaints and reports against a Senate employee shall be investigated by the chief clerk of the Senate. If a complaint is against the LSO director or the House or Senate chief clerk, then the duties of the director or chief clerk under this subsection shall be the duties of the presiding officer of the House or Senate.

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- C. Investigations may include interviews with the person making the complaint or report, the person alleged to have committed discrimination or harassment and any witnesses who may have relevant information.
- D. At the request of the person responsible for investigating the complaint or report, Management Council or the House or Senate when in session, may approve use of an outside individual or entity to investigate complaints and make recommendations. The person lodging the complaint may specify their preference for an internal or outside investigation.
- E. During the pendency of an investigation, a presiding officer, the LSO director or House or Senate chief clerk may take steps necessary to separate or limit the interaction of the person making the complaint or report and the person alleged to have committed discrimination or harassment.
- F. The person responsible for the investigation shall report the findings of the investigation in writing to the person lodging the complaint or filing the report and the person alleged to have committed discrimination or harassment.

#### **VI. Corrective Action**

If the person responsible for investigating a complaint determines that discrimination or harassment occurred, action shall be taken immediately to reasonably ensure that the discrimination or harassment is stopped and does not reoccur.

- A. Corrective action for members may include written reprimand, mandatory increased anti-discrimination or sexual harassment training, reassignment of duties, loss of legislative responsibilities or assignments, censure, expulsion or other corrective action in accordance with rules of the Legislature, the Wyoming Constitution and Wyoming statutes.
- B. Corrective action for employees may include counseling, increased training, written reprimand, suspension, demotion or termination of employment.
- C. Corrective action may be taken against any person whose conduct was found to violate this policy as provided by law, the rules of the Legislature, and the inherent authority of the presiding officers and chairmen to regulate the conduct and behavior of persons associating with their respective bodies.
- D. If the person conducting an investigation under this policy determines that the complaint or report alleges criminal activity, further investigation or corrective action under this policy may be held in abeyance pending completion of any criminal investigation.

#### **VII. Confidentiality**

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All persons investigating a complaint or report shall keep confidential all aspects of the complaint, report and investigation unless all parties to the complaint or report waive confidentiality. Absent a waiver, any disclosure will be limited to only that which is necessary to investigate the complaint or report properly, to take corrective action or to report a potential violation of state or federal criminal law. If an investigation determines that corrective action is required against a member, the identity of the person lodging the complaint or filing the report shall remain confidential, but the identity of the member shall be made available to the public if the appropriate corrective action requires the vote of the entire body as provided by the rules of the Legislature, the Wyoming Constitution and Wyoming statutes.

In response to a request, the LSO director may release information on the number of complaints and reports received under this policy and other information to the extent the information does not allow for identification of any person and does not violate rules of the Legislature, Management Council Policy, the Wyoming Public Records Act or other applicable laws.

#### **VIII. Implementation**

The Legislature will ensure that this policy is disseminated and posted on the Legislature's website, included in the appropriate employee handbooks and is made available to interested parties through the LSO. All members and employees shall receive training on this policy at least annually.

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