



WYOMING LEGISLATIVE SERVICE OFFICE
MATT OBRECHT, *Director*

December 8, 2017

To: Members, Management Council

From: Matt Obrecht, LSO

Subject: Anti-Discrimination and Sexual Harassment Policy and Training

The Wyoming Legislature adopted its current Anti-Discrimination and Sexual Harassment Policy in 2002. Considering the recent issue of sexual harassment in other state legislatures, it may be time to review and revise this policy to ensure it is efficient, fair, supportive and responsive. As we are discovering from other states' experiences, we should be on-guard for under-reporting of discriminatory and harassing incidents. Therefore, it may also be time to take a more frequent and proactive approach to training to combat discrimination and harassment.

Following are some initial ideas of LSO staff after a review of the current Management Council Anti-Discrimination and Sexual Harassment Policy and offered trainings, as well as ideas we've gleaned from other legislative bodies.

Trainings

- Trainings could be designed to create a culture of respect in the legislative branch and a culture where inappropriate behavior is not tolerated.
- Trainings could be conducted by legislative leadership to emphasize the importance of respect in the legislative branch.
- Trainings could be made mandatory prior to every session. Currently the anti-discrimination and sexual harassment training is given once a biennium.
- Trainings could be specific to the legislative setting. The legislative setting is unique in that, depending on the patron, it can be a workplace, a public forum, a place of public service, an educational opportunity or a combination thereof. There may be a need to

discuss decorum appropriate for committee meetings, on the floor and in legislative functions, which transcends discussions on workplace discrimination and sexual harassment. Members and staff should be provided as clear of a message as possible as to what constitutes appropriate or inappropriate behavior towards other members, staff and lobbyists.

Appendix A lists several options for potential trainings that may have relevance to the legislative branch.

Policy (MC Policy 02-02)

The Management Council Anti-Discrimination and Sexual Harassment Policy was adopted in 2002, **Appendix B**. It provides many of the necessary elements of a workplace anti-discrimination and sexual harassment policy required by federal civil rights law. With the Legislature's and LSO's 15 years of experience implementing and interpreting this policy, and taking into consideration feedback from interested parties, following are some suggested areas of revision to the policy:

- Create two separate policies to recognize the differences between a workplace setting, legislative setting or public setting. One policy could target conduct and complaints against legislative staff and a separate policy to target conduct and complaints against members.
- Specify a reporting mechanism for third parties. Under the current policy, it may be unclear to a lobbyist, executive branch agency member or other third party how and to whom to report experiences of discrimination or sexual harassment in the legislative setting.
- Provide the presiding officer with the ability to require additional discrimination and sexual harassment training for a member with a substantiated complaint. This could be used when more severe discipline is not warranted. Although this is likely already available through the inherent authority of legislative leadership, it could be formally recognized as a remedial measure in policy.
- Designate an individual or office to maintain documentation on reports of discrimination and sexual harassment. This could be used in situations when a member has continued, substantiated complaints during the member's time in office and throughout the tenure of multiple members of leadership. This designated individual or office could be the office of the LSO director.
- Provide a process for outside investigation. This could be used when a complaint is filed against the LSO director or a presiding officer, or when other extenuating circumstances warrant outside investigation.

- Create an open and accessible environment for people who want to discuss filing a complaint or who want to report inappropriate behavior.
- Provide for a process of reporting and investigating complaints that is transparent but protects confidentiality.
- Specify what types of corrective actions are available if a complaint is substantiated. This could include everything from a private reprimand to expulsion for members, or termination of employment for staff.
- Ensure that any policy adopted meets legal muster and conforms to the best practices adopted in state legislatures similar to Wyoming. Utilize expertise from the Wyoming Attorney General's Office, the University of Wyoming Law School, the National Conference of State Legislatures, the Mountain States Employment Council and other resources.

Please let me know what you think about the suggested approaches outlined above. These ideas are still in their initial phase. While the conversation of discrimination and sexual harassment is unpleasant and difficult, it should not dissuade us from attempting to craft a responsive policy and trainings on this issue.

Appendix A



SEXUAL HARASSMENT TRAINING OPPORTUNITIES

Mountain States Employers Council

Training	Length	Cost*	Recommended Participants
<i>Sexual Harassment Basics</i>	1.5 hours	\$850 per session for up to 25 people + \$10 per person fee for more than 25 attendees	All Legislators, Staff
<i>Harassment Prevention for Employees + Best Practices</i>	2 hours	\$850 per session for up to 25 people + \$10 per person fee for more than 25 attendees + \$135 customization fee	All Legislators and/or Legislator(s) who've committed sexual harassment
<i>Sexual Harassment Investigations in the Workplace</i>	Full Day	\$2100 per day for up to 25 people + \$45 per person fee for more than 25 attendees	Legislative Leadership, LSO Management
<i>Investigations in the Workplace Workshop</i>	Two Full Days	\$2100 per day for up to 25 people + \$45 per person fee for more than 25 attendees	Legislative Leadership, LSO Management

* Some travel costs may also be added to the cost of these courses for mileage, hotel stay and meals.

Wyoming Attorney General's Office

Training	Length	Cost	Recommended Participants
<i>Workplace Discrimination: Overview of Management Council Policy & Reporting Procedures</i>	1 hour Presentation & Video	Free	All Legislators, Staff
<i>Handling Sexual Harassment Complaints:</i> -How complaints are made -Designating complaint recipients -What to do upon receiving a complaint -Selecting an investigator -Steps to take during the pendency of an investigation -Conducting the investigation -Confidentiality and anti-retaliation -Steps to take after the close of an investigation -Policy determinations	30 minutes	Free	Legislative Leadership, LSO Management
Various remediation training materials & videos	TBD	Free use of Attorney General's Video; \$200-\$400 for use of outside materials	Legislator(s) who have committed sexual harassment

Wyoming Department of Administration and Information

Training	Length	Cost	Recommended Participants
<i>State of Wyoming Executive Order 2000-4: Anti-Discrimination Policy & Management Council Policy:</i> This course covers the policies in detail, including prohibited conduct, the complaint procedure, investigations, and corrective action.	30 minute online video or in person presentation	Free	All Legislators, Staff

National Conference of State Legislatures

Training	Length	Cost	Recommended Participants
<i>Harassment and Hostile Workplace:</i> Jonathan Segal, Esq., Duane Morris LLP Seminar includes a detailed overview of what sexual harassment is, explains legal definitions and provides examples. Seminar also includes advice on complaint and investigation procedures.	60-120 minutes	Speaking fee dependent on time/date Travel costs may be shared with NCSL	All Legislators, Leadership, Staff *Breakout sessions with leadership & managers is advised.
<i>Discrimination & Harassment in the Legislative Environment:</i> Jon Heining, Texas State Legislature Staff Attorney Seminar includes an overview of what sexual harassment is, legal definitions and provides examples of harassment. Also, discusses EEOC laws, reporting discrimination and harassment and definitions and examples of a hostile work environment.	60-120 minutes	No speaking fee Travel costs may be shared with NCSL	All Legislators, Leadership, Staff

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Appendix B

Management Council Policy 02-02

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

(Source Notes: MC Minutes 10/08/2002)

ANTI-DISCRIMINATION POLICY

I. Statement of Policy

The State of Wyoming legislative branch strongly disapproves of and does not tolerate discrimination as defined in this policy. Any form of discrimination or harassment that violates applicable federal and state law, including, but not limited to, discrimination or harassment related to an individual's race, religion, color, sex, national origin, age or disability is a violation of this policy. All reported or suspected occurrences of discrimination or harassment shall be promptly and thoroughly investigated. If discrimination or harassment has occurred in violation of this policy, appropriate corrective action shall be taken. This policy is applicable to all employees, officials, appointees, and elected officials of the Legislative branch of Wyoming State government.

II. Prohibited Conduct

This anti-discrimination policy prohibits the following conduct:

A. Prohibited Conduct - Sexual Harassment:

1. Definition: Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual or gender-based nature when:

- (a) Submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment; or
- (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 working environment.

B. Prohibited Conduct - Ethnic slurs, racial and religious jokes or derogatory comments based on an individual's race, religion or ethnic background and any other verbal or physical conduct relating to an individual's race, religion, sex, national origin, age or disability.

C. Prohibited Conduct - Failure to provide reasonable accommodation to an employee who is a qualified disabled person as set out in W.S. 27-9-105.

D. Prohibited Conduct - Basing decisions affecting an individual's employment or any term or condition of the individual's employment on the individual's race, color, national origin, creed, sex, age or because the person is a qualified disabled person.

E. Prohibited Conduct - Any other conduct that violates applicable anti-discrimination law.

F. Prohibited Conduct - Retaliation. This policy prohibits retaliation against any employee who has filed a charge, testified, assisted or participated in any manner in an investigation under this policy.

III. Complaint Procedures

A. Any employee of the legislative branch of state government who believes he has been discriminated against or harassed by anyone, including a supervisor, co-worker, visitor, or legislator, in violation of this policy, should report the conduct immediately. An employee may report the conduct to the employee's immediate supervisor or any other supervisor in the employee's chain of command.

B. Before or in addition to reporting the discrimination or harassment, an employee may, if he or she desires, notify the alleged harasser of the unwelcome conduct and request that the conduct stop immediately.

C. Any supervisor receiving a report of or suspecting harassment or discrimination against an employee of the Legislature shall immediately report the conduct to the Director of the Legislative Service Office, or to the Chief Clerk of the House or Senate as applicable if the complainant is a member of the Session Staff.

IV. Investigations

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

B. The complaint shall be investigated by the Director of the Legislative Service office if the complainant is a member of the LSO staff, or by the Chief Clerk of the House or Senate as applicable if the complainant is a member of the Session Staff. If the complaint involves the alleged actions of an elected member of the House or Senate, one or more members of the House or Senate as applicable may be designated by the presiding officer to participate in the investigation.

C. The employee alleging, the employee or person accused of, and any employee witnessing harassment or discrimination shall cooperate in the investigation of the alleged harassment or discrimination.

D. To the extent practicable, all complaints of harassment or discrimination shall remain confidential. It may be necessary, however, to disclose the nature or origin of the complaint to investigate it properly or to take corrective action.

V. Corrective Action

If it is determined that discrimination or harassment prohibited by this policy has occurred, action shall be taken immediately to reasonably ensure that the discrimination or harassment is stopped and does not reoccur.