

HAWAII STATE HOUSE OF REPRESENTATIVES

Excerpted from the House Administrative and Financial Manual

Chapter 26 Workplace Harassment Policy

Sec. 26.1. Policy Statement. (a) It is the policy of the House to promote a safe and civil environment for all House members, employees, and those who have business with the House. The House is committed to working with its House members and employees to maintain a work environment that is respectful and free from workplace harassment, and any such harassment as described in the House's policy is strictly prohibited. It is the goal of the House to create an environment that ensures House members and employees conduct themselves in a manner that not only protects individuals, but also promotes public confidence in the institution and its people. Any form of harassment that is prohibited by this policy, even if not sufficiently severe or pervasive to constitute unlawful conduct, such as bullying, may result in disciplinary action as discussed below.

(b) Members of the public who have business with the House shall be accorded the same respect as any House member or employee, and shall likewise be entitled to an environment free from harassment.

Sec. 26.2. Definition of Workplace Harassment. (a) Harassment includes behavior that is unwelcomed by an individual and is considered to be humiliating, demeaning, or offensive, when such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment. Such harassment is strictly prohibited.

(b) The House prohibits harassment that targets an individual's status such as race, sex, age, religion, color, ancestry, mental or physical disability, genetic information, citizenship, national origin, veteran/military status, marital status, pregnancy, childbirth, breastfeeding or related medical condition, sexual orientation, gender identity or expression, arrest and court record, domestic or sexual violence victim status, credit history, whistleblower status, or any other status or condition that is protected by state or federal law.

(c) Examples of prohibited harassment include slurs, epithets, offensive jokes, physical assaults or threats, intimidation, mockery, insults, offensive objects or pictures, unreasonable interference with work performance, or other unwelcome conduct that is offensive, intimidating, or hostile.

(d) Discrimination, which is an adverse employment action against an employee based on a status as defined in subsection (b) above, is prohibited and subject to the same reporting requirements, investigation requirements, and resolution procedures as described below.

Sec 26.3 Definition of Bullying. (a) Bullying, while similar in action and effect as harassment, is not based on status as defined in subsection Sec. 27.2. Bullying is a pattern of repeated behavior that occurs over a period of time that a reasonable person would find hostile and offensive, and is intended to harm someone who feels powerless to respond.

(b) Examples of bullying include insults, offensive remarks, shouting, yelling, angry outbursts, humiliation, ridicule, teasing, spreading rumors, ignoring attempts at communication, invasion of personal space, or threats of violence. Bullying can include the same examples as harassment.

(c) Like harassment, bullying is strictly prohibited and subject to the same reporting requirements, investigation requirements, and resolution procedures as described below.

Sec. 26.4. Definition of Sexual Harassment. (a) Sexual harassment, like the status-based harassment previously described, is strictly prohibited. However, sexual harassment raises unique issues and is therefore described in detail in its own section here.

(b) Sexual harassment includes unwelcome verbal, non-verbal, or physical contact of a sexual nature. It is not limited to only physical assaults, unwelcome or unwanted sexual advances, or requests and demand for sexual favors. Examples of sexual harassment include but are not limited to:

(1) Physical contact (e.g., groping, patting, pinching, hugging, massaging, kissing, or brushing up against the body of another).

(2) Verbal behavior (e.g., sexual or suggestive comments, jokes, teasing or nicknames, remarks or innuendo of a sexual nature, graphic commentaries about an individual's body, gossip regarding an individual's sexual activities, commentary about an individual's sexual prowess or deficiencies, or repeated attempts to ask someone out or otherwise establish a relationship with an individual when unwelcomed).

(3) Non-verbal behavior (e.g., leering, ogling, obscene gesturing, suggestive or insulting sounds, or sending, circulating, or displaying any materials, messages, or images of a sexual nature).

(4) Any abuse of power or quid pro quo propositioning (e.g. conditioning employment, benefits, or favorable working conditions on submission to sexual conduct or in exchange for sexual favors) by a House member over an employee or a supervisor over a subordinate. This includes any instance where a House member or employee uses his or her position of power to leverage or coerce sexual favors from a member of the public in return for special influence or other benefit pertaining to the legislative process, including but not limited to getting a bill passed, preventing a bill from passing, including a budget item, or other special dispensation.

Sec. 26.5. Applicability. Harassment is prohibited between House members and employees; supervisors and subordinates or volunteers; or between individuals of any of those categories. Harassment is also prohibited between individuals in any aforementioned category and a vendor, lobbyist, contractor, or any member of the public engaging in business with the House or otherwise meeting or visiting with House members or employees. Likewise, no such member of the public shall harass any House member or employee.

Sec. 26.6. Reporting. (a) To maintain a safe work environment, all House members and employees shall report any instance of harassment whether the harassment is personally experienced by and directed at a specific individual, or if it is observed by an individual directed at someone else. A "report" includes a complaint by the subject of harassment.

(b) Any incident of harassment shall be reported immediately.

(1) A House member shall report harassment directly to the Speaker or the Chief Clerk.

(2) A House employee shall report harassment to his or her immediate supervisor, or the employee's next-higher-level supervisor. If the employee is uncomfortable reporting to either of the aforementioned supervisors, a report of harassment shall be made to the Speaker or the Chief Clerk.

(3) A person who is not a House member or employee of the House may report harassment to any supervisor, the Speaker, or the Chief Clerk.

(4) Incidents involving the Speaker shall be reported per Section 27.11.

(5) In addition to the options listed above, an employee who is the subject of harassment may seek recourse through the Hawaii Civil Rights Commission, the U.S. Equal Employment Opportunity Commission, or state or federal court.

(c) Supervisors who receive reports of harassment shall immediately notify the Speaker or the Chief Clerk.

(d) A person who is the subject of physical violence or a threat of physical violence is encouraged to contact Capitol Security at 586-1352, or the police at 911.

(e) Any employee who receives a protective or restraining order is required to provide the Chief Clerk's Office with a copy of such order.

Sec. 26.7. Investigation. (a) Upon receipt or notification of a report, the Speaker or the Chief Clerk shall promptly begin an investigation. An independent investigator may be used. If so, the investigator shall supply a written summary of the guidelines for the investigation. Guidelines and an estimated timeframe for completion of the investigation shall also be provided to the complainant. On matters pertaining to a report, the Speaker or Chief Clerk may consult with the House Chief Attorney or outside counsel.

(b) An investigation may involve interviews of the individual making the report, the alleged offender, and witnesses to the alleged harassment.

(c) Upon completion of the investigation, the individual making the report and the individual against whom the report is made shall be advised of the investigation's results. However, certain results or information may be withheld from disclosure if they are pertinent to a criminal investigation or otherwise prevented from disclosure pursuant to a state or federal law.

Sec. 26.8. Resolution. (a) If the investigation reveals that the report is valid, the Speaker or the Chief Clerk shall take prompt and appropriate disciplinary action to discipline the offender and prevent the recurrence of the harassing behavior.

(b) The type of disciplinary action taken will vary depending upon the nature of the offense.

(i) For employees, this may include, but is not limited to, warning, reprimand, counseling, training, demotion, suspension, or termination of employment.

(ii) For House members, action may also include loss of committee assignments, leadership positions, or other disciplinary action taken by the House, including expulsion, in accordance with the Rules of the House of Representatives.

(iii) If the offender is a member of the public, action may include barring from the premises, terminating business relationships, or referral to law enforcement authorities.

Sec. 26.9. Retaliation Prohibited. No individual who in good faith reports or complains of harassment or any witness who takes part in an investigation of such report, shall be subjected to any type of retaliation or reprisal. Reports of any acts of retaliation or reprisal shall be investigated and if necessary, disciplinary action shall be taken.

Sec. 26.10. Confidentiality. All aspects of the harassment reporting, investigation, and resolution procedure shall be confidential to the greatest extent possible. All activities undertaken during the course of the process shall be conducted confidentially, and information regarding any report shall be provided on a need-to-know basis only. All parties, including the individual making the report, the alleged offender, and any witnesses shall be advised of the necessity of confidentiality and that any breach of confidentiality shall be treated as misconduct subject to disciplinary action, unless done so in the course of an action required or provided for by law.

Sec. 26.11. Speaker and Chief Clerk. (a) In all aspects of any report and investigation, the Speaker and Chief Clerk shall maintain complete fairness and impartiality toward all individuals involved, including the individual making the report, the alleged offender, and any witnesses.

(b) If the subject of the report is the Speaker, the report shall be immediately reported to the Vice Speaker, who shall perform all duties associated with this Chapter normally performed by the Speaker. In this case, the Chief Clerk shall report directly to the Vice Speaker in all associated matters.

(c) If the subject of the complaint is the Chief Clerk, the report shall be reported directly to the Speaker, who shall perform all duties associated with this Chapter.

Sec. 26.12. Publication and Training. (a) Each member and employee shall receive a copy of the House's policy on reporting and eliminating harassment in the workplace in order to be familiar with the various types of harassment and how to address any instances that arise.

(b) Annual training on these policies shall be mandatory for all House members and employees.