# Legislative Council Policy

**Sexual and Other Workplace Harassment**

**DRAFT Dated 1/25/2018**

**APPLICABILITY:** This policy applies to members of the Alaska State Legislature and all employees of the Legislative Branch. This policy and the processes described in this policy do not apply to persons who are not employees of the Legislative Branch, except as provided under section (2) subsection (c) and section (3) subsection (j) of this Policy.

## Policy.

* 1. The Legislative Branch is committed to providing a safe and respectful workplace that is free of harassment. Members of the Alaska State Legislature and all Legislative Branch employees are expected to conduct themselves in a manner that is free of harassment and to discourage all harassment in the workplace and at professional meetings, seminars or any events at which legislative business is conducted.
  2. This policy is designed to provide members and employees with informal and formal options to correct harassing conduct before it rises to the level of severe or pervasive harassment or discrimination. The Legislative Branch encourages members and employees to address potentially harassing conduct through reports to Legislative Affairs Agency (LAA), Personnel Office or other avenues set forth in this policy.
  3. Violation of Alaska Human Rights Law (AS 18.80.220 – 18.80.280) is also a violation of the Legislative Ethics Act.
  4. It is a violation of Alaska Human Rights Law and this policy to retaliate against a person who has opposed practices forbidden under AS 18.80.220 – 18.80.280.
  5. This policy is not a civility policy. There are actions that may be inappropriate in a professional work environment that may not be a violation of this policy.
  6. Training regarding this policy is considered a component of the mandatory Ethics training.
  7. Nothing in this policy restricts or dissuades an individual from filing a complaint with the Alaska Commission on Human Rights, the United States Equal Employment Opportunity Commission, the Alaska Select Committee on Legislative Ethics, or the Alaska Court System.

1. **Terms.** As used in this policy:
   1. “Employees” includes all individuals employed under AS 24 as well as legislative interns and volunteers performing services for the Legislative Branch.
   2. “Members” means an individual sworn into office as either a Senator or a Representative in the Alaska State Legislature.
   3. “Harassing conduct” or “harassment” includes sexual harassment or workplace harassment based on a protected class. “Harassing conduct” may include conduct by a nonemployee located in the workplace such as a vendor, lobbyist, or member of the public.
   4. “Knowledge” of harassing conduct includes conduct about which an appointing authority or supervisor knows or, with the exercise of reasonable care, should know.
   5. “Protected class” means a class of individuals defined by a characteristic that may not be targeted for discrimination, including sex, color, race, religion, national origin, age, mental or physical disability, marital status, change in marital status, pregnancy, or parenthood.
   6. “Retaliation” means an action taken against, or proposed to be taken against, an employee or a member with respect to a term or condition of employment for the reason that the employee has opposed conduct that is prohibited under this policy. Retaliation includes actions or comments that might deter a reasonable person from engaging in protected activity such as filing a complaint or participating in a workplace investigation.
   7. “Sexual harassment” means unwelcome conduct in the form of a sexual advance, sexual comment, request for sexual favors, unwanted or offensive touching or physical contact of a sexual nature, unwanted closeness, impeding or blocking movement, sexual gesture, sexual innuendo, sexual joke, sexually charged language, intimate inquiry, persistent unwanted courting, sexist insult, gender stereotype, or other verbal or physical conduct of a sexual nature, if:
      1. Submission to the conduct is made either explicitly or implicitly a term or condition of a person’s employment;
      2. A person expressly or by implication conveys that declining to submit to the conduct will affect a person’s job, leave request, benefits or business before the Legislature; or
      3. The unwelcome conduct has the purpose or effect of unreasonably interfering with a person’s job performance, or creates a work environment that a reasonable person would find intimidating, hostile or offensive.
   8. “Unwelcome conduct” means conduct that an individual does not incite or solicit and that the individual regards as undesirable or offensive. An individual may withdraw consent to conduct that was previously welcomed by the individual. Conduct or communications that might be welcome to one person may be unwelcome to another person. Conduct or communications that might have been welcome between two individuals at one time may become unwelcome at a later time.
   9. “Workplace harassment” means unwelcome conduct in the form of treatment or behavior that, to a reasonable person, creates an intimidating, hostile or offensive work environment. “Workplace harassment” includes discrimination based on a person’s protected class. “Workplace harassment” also includes unwelcome conduct that occurs outside of work during nonworking hours if the conduct creates a work environment that a reasonable employee would find intimidating, hostile or offensive. “Workplace harassment” does not include every minor annoyance or disappointment that an employee may encounter in the course of performing the employee’s job. A single incident may or may not constitute harassment but may be important to establish a pattern of behavior.

## Appointing authorities and supervisors. As used in this policy.

* 1. Supervisor means a person who directs the regular work assignments of any employee.
  2. The appointing authority during session for house and senate employees is their respective Rules Chair.
  3. The appointing authority during interim for house and senate employees is their respective Presiding Officers.
  4. The appointing authority for select staff in the finance committees are hired by their respective Finance Co-Chairs.
  5. The appointing authority for employees hired by a permanent interim committee is their respective committee chair.
  6. The appointing authority for the Legislative Affairs Agency is the Executive Director.
  7. The appointing authority for the Legislative Finance Division is the Legislative Fiscal Analyst.
  8. The appointing authority for the Ombudsman’s Office is the Ombudsman.
  9. The appointing authority for the Office of Victims’ Rights is the Chief Victims’ Rights Advocate.
  10. An appointing authority or supervisor shall take appropriate action to prevent, promptly correct and report harassment about which the appointing authority or supervisor knew or, with the exercise of reasonable care, should have known. “Harassing conduct” may include conduct by a nonemployee located in the workplace such as a vendor, lobbyist, or member of the public.
  11. If an appointing authority or supervisor has knowledge of harassing conduct, the appointing authority or supervisor shall report the conduct to the LAA Human Resources Manager.

## Designated Staff. Designated staff are individuals to whom an employee or member may file a formal or informal complaint.

## Designated staff will be at least one employee or member from each of the following offices.

* + 1. LAA Personnel
    2. Legal Services Division
    3. Senate Rules Committee
    4. House Rules Committee
    5. Senate President’s
    6. Speaker of the House’s
    7. Other individuals as requested and approved by the Chair of the Legislative Council
  1. A list of designated staff will be posted on the LAA Personnel Office intranet web site at the beginning of each Legislature and will be maintained by the LAA Personnel Office.

## Designated staff will receive additional training regarding their role with respect to this policy.

## Members or employees subjected to harassment.

* 1. A member or employee of the Legislative Branch who is subject to, or witnesses, what the member or employee believes to be harassment should report the conduct as soon as possible.
  2. An employee may report what the employee believes to be harassment to any of the following individuals:
     1. The employee’s supervisor. If an employee does not have a supervisor or is unaware of a supervisor, an employee may report concerns to other individuals listed in subsections (b) to (c) of this section.
     2. Designated Staff listed in section (4) of this policy.
     3. LAA Human Resources Manager..
  3. A member may report conduct that the member believes to be harassing conduct to the LAA Human Resources Manager.
  4. If an employee works for the person alleged to be involved in the harassment, the employee should report to an alternative point of contact listed in this section.
  5. If an employee or member is unsure whether to file an informatl or formal complaint, the employee or member may seek advice from the LAA Human Resources Manager.

## Informal reporting process.

* 1. A person who believes that they may have experienced harassment may simply want the specific conduct to stop, but may not be interested in pursuing a formal complaint process or legal proceeding. The informal reporting process is designed and intended to meet that need.
  2. A member or employee of the Legislative Branch may, within one year of the date of the alleged harassment, initiate an informal reporting process described in this section by reporting the harassing conduct to any of the parties listed in section (4) of this policy.
  3. The report may be in writing or verbal.
  4. The report must include specific details of the alleged harassment, the name of the person alleged to be involved in the harassment and the dates and times of the alleged harassment.
  5. An investigation will occur if there is a report of instances of severe or pervasive harassment or discrimination based on a protected class. The investigation may result in corrective action against a member or employee who engages in harassment as described in this policy.
  6. When an informal report is made under this subsection, the appointing authority shall immediately take appropriate action to ensure that the reporting party has a safe and non-hostile work environment.
  7. If an investigation is conducted based on a report under this subsection, all members and employees involved in the investigation shall cooperate and keep information regarding the matter confidential.
  8. Information on how the report was resolved will be provided to both the complainant and the alleged harasser. The complainant and the alleged harasser have two work days to appeal the resolution.
  9. If a complaint is handled by an individual office, the office will file a report with the LAA Human Resource Manager as soon as the complaint has been handled. This report will include:
     1. Date, time, and location of the situation that generated the complaint.
     2. The nature of the complaint.
     3. The complainant, or person being harassed if the complaint is filed by a third party, and the alleged harasser.
     4. Basic facts of the complaint.
     5. How the situation was handled, which should include if the complainant was satisfied with the out come.
     6. Who was notified of the final disposition of the complaint
  10. After an informal report is made, or at any time during the informal reporting process, a reporting party may decide to institute a formal complaint process under section (7) of this rule.
  11. Institution of a formal complaint process supersedes and terminates any informal reporting process brought by the reporting party.

## Formal complaint process.

* 1. A person may, within one year of the date of the harassment, initiate a formal complaint process by submitting a complaint with the Human Resources Manager. In the event of a conflict with the Human Resources Manager, the member or employee may initiate a formal complaint process with a designated staff from LAA Personnel Office or the Executive Director of the Legislative Affairs Agency.
  2. A formal complaint may be in writing or verbal and shall include:
     1. The name of the complainant;
     2. The name of the person or persons alleged to be involved in the harassment;
     3. The names of all parties involved, including witnesses;
     4. A description of the conduct that the member or employee believes is discriminatory or harassing;
     5. The date or time when the alleged conduct occurred; and
     6. A description of the potential remedy the member or employee desires.
  3. A verbal report shall be written down by the person receiving the information and shall include all the information required under subsection (b) in this section.
  4. The office or person receiving a complaint may request additional information it there are deficiencies in the initial complaint.
  5. When a formal complaint is submitted, the appointing authority shall immediately take appropriate action to ensure that the complainant has a safe and non-hostile work environment.
  6. Within ten (10) work days after receipt of the complaint, an investigator will be appointed. In all instances in which the person alleged to be involved in the harassment is a member, the independent investigator unaffiliated with the Legislative Branch with experience conducting investigations of harassment. . With respect to any other complaint, an investigator will be appointed who is an employee of LAA Personnel Office or an independent investigator unaffiliated with the Legislative Branch with experience conducting investigations of harassment.
  7. In all cases where an independent investigator is appointed, the independent investigator will report through the LAA Human Resources Manager.
  8. All members and employees involved in the investigation shall cooperate with the investigation and keep information regarding the investigation confidential.
  9. The person alleged to be involved in the harassment shall be notified that a formal complaint has been received and an investigation has been initiated.
  10. The investigator shall conduct an investigation and present a draft findings of fact and, if requested recommendations, within sixty (60) work days of appointment under subsection (e) of this subsection. The independent investigator may be granted an extension of time by the LAA Human Resources Manager to complete the investigation.
  11. Notification and copies of the draft findings of fact and, if requested recommendations, will be given to the Human Resources Manager, the complainant and the person alleged to be involved in the harassment.
  12. Within five (5) work days after notification under subsection (i), recipients may request modifications to the findings of fact. Any requests to modify the findings of fact must be made in writing and must explain the reason for the modification. Requests for modification may be granted at the discretion of the investigator. If the modification is not added to the, the recipient(s) may have a rebuttal added as an addendum to the final report.
  13. Within ten (10) days after receipt of the final report, the LAA Human Resources Manager or the designated staff shall submit the investigator’s final report to the complainant, the person or persons alleged to be involved in the harassment and the appointing authority of any person alleged to be involved in the harassment.
  14. In the case of a member the report will be handled as described is section (9).
  15. The appointing authority shall act on the final report as soon as practicable after receipt.
  16. Even if no formal complaint process is initiated, instances of severe or pervasive harassment or discrimination based on a protected class shall be investigated. The investigation may result in corrective action against a member or employee who engages in harassment as described in this policy.

## Reporting requirements for informal reports and formal complaints.

* 1. Appointing authorities and supervisors shall report allegations of, or knowledge of, alleged harassing conduct to the LAA Human Resources Manager.
  2. If a party informally reports harassment and wishes the report to remain anonymous or wishes that no action be taken, the LAA Human Resources Manager, shall determine appropriate course of action.
  3. In the case of an informal report of harassing conduct and with consent from the party making the report, Human Resources Manager, shall take the following steps, in addition to any steps taken under subsection (b):
     1. If the person alleged to be involved in the harassment is a member, notify the highest ranking member of the same caucus as the alleged harasser of the fact that a report has been made and the name of the reporting party. The highest ranking member shall immediately notify the alleged harasser of the fact that a report has been made under this policy and the name of the reporting party.
     2. If the member alleged to be involved in the harassment is the highest ranking member of a caucus, notify the presiding officer of the chamber in which the alleged harasser serves, or if the member alleged to be involved in the harassment is the presiding officer, notify the caucus leader of the same caucus as the presiding officer. The member who is notified of the report shall immediately notify the alleged harasser of the fact that a report has been made under this policy and the name of the reporting party.
     3. If the person alleged to be involved in the harassment is a legislative staff employee, notify the appointing authority of the fact that a report has been made and the name of the reporting party. The appointing authority shall immediately notify the alleged harasser of the fact that a report has been made and the name of the reporting party.
     4. If the person alleged to be involved in the harassment is a member of the nonpartisan staff, notify the head of the agency of which the alleged harasser is an employee. The legislative agency head shall immediately notify the alleged harasser of the fact that a report has been made and the name of the reporting party.
     5. If the person alleged to be involved in the harassment is a legislative agency head, notify the committee chairman of the appropriate oversight committee. The committee chairman shall immediately notify the alleged harasser of the fact that a report has been made and the name of the reporting party.
     6. If the person alleged to be involved in the harassment is the Ombudsman or the Chief Victims’ Rights Advocate, notification shall be provided to the presiding officers. The presiding officers shall immediately notify the alleged harasser of the fact that a report has been made and the name of the reporting party.
  4. In the case of a formal complaint, in addition to any steps taken under subsection (c) of this section, the Human Resources Manager shall deliver a copy of the formal complaint:
     1. In a case where the person alleged to be involved in the harassment is a member of the Legislature or Legislative Staff, notification shall be provided to the highest ranking member of the caucus of the chamber in which the alleged harasser serves or works.
  5. In a case where the person alleged to be involved in the harassment is an employee of a legislative agency, notification shall be provided to the agency head.Notwithstanding subsection (d), if the person alleged to be involved in the harassment is a person required under subsection (d) to receive the written complaint, then in lieu of service under subsection (d), the office receiving the report shall deliver a copy of the report:
     1. In a case where the person alleged to be involved in the harassment is a caucus leader, notification shall be provided to the presiding officer of the chamber in which the caucus leader serves.
     2. In a case where the person alleged to be involved in the harassment is a presiding officer, to the caucus leader of the same caucus and chamber as the presiding officer.

## Formal complaints against members.

* 1. If any of the persons alleged to be involved in the harassment is a member, the final report shall be provided to the respective special committee on conduct of the chamber in which the member serves. Special committees on conduct are established as prescribed in section (12) of this rule.
  2. When a special committee on conduct receives a final report of the findings and, if requested recommendations, from the investigator, the committee shall schedule a public hearing and give notice to the complainant and alleged harasser of the date and location of the hearing. The hearing may not be set for a date that is less than fourteen (14) work days nor more than forty-five (45) work days after the committee receives the investigator’s final report.
  3. At the hearing, the complainant and the alleged harasser, or their attorneys, may present documents or other evidence and may suggest witnesses. Only committee members may question or otherwise address witnesses. Committee members shall limit the scope of their questions to topics that a court in this state would deem relevant in a civil action involving the same conduct.
  4. The committee shall deliberate on the investigator’s final report, testimony and other evidence presented at the hearing and report a recommendation. The committee may recommend:
     1. Reprimand;
     2. Censure;
     3. Expulsion;
     4. Removal or reduction of staffing allotment,
     5. Removal or reduction of travel privileges,
     6. Other disciplinary actions deemed appropriated, or
     7. That the committee take no further action.
  5. The committee shall report its recommendation to the complainant and the person alleged to be involved in the harassment. The complainant and the person shall each have ten (10) work days to request that the committee review the recommendations. A request for review shall be in writing and shall state the requester’s objections to the recommendation. A copy of the request for review shall be given to the other party, who shall have five days to respond in writing to the request for review. The committee shall consider the request for review and response and report its recommendation within ten (10) work days after the date for the filing of the response to a request for review.
  6. At the end of any review period under subsection (e), the committee’s recommendation shall be made to the chamber for which the committee serves. The chamber shall act on the recommendation during the next regular legislative day that the body convenes. Any sanction considered by a chamber shall be adopted by the chamber by simple majority vote in accordance with Uniform Rule 49(a)(1). If the report recommends that the harassing member be expelled from the body, a special resolution shall be introduced in accordance with Uniform Rule 49(a)(2) and Sec. 12, Art. II of the State Constitution.

1. **Appeal Process**. If a party to a complaint does not agree with its resolution, that party may appeal to the appropriate appointing authority or, in the case of a member, the appropriate presiding officer within ten (10) work days of receiving notice about the resolution of the complaint. With in 45 days the appointing authority, or in the case of a member the appropriate presiding officer, shall render a decision on the appeal.
2. **Independent investigator costs.** The costs of an independent investigator hired pursuant to this rule shall be borne by the appointing authority of the alleged harasser. Appointing authorities are set out in section (3) in this policy.
3. **Retaliation prohibited.** Retaliation against any person who participates in a process described in this policy is prohibited. Retaliation can be an employer action that is work-related, or one that has no tangible effect on employment, or even an action that takes place exclusively outside of work, as long as it may well dissuade a reasonable person from engaging in protected activity. Retaliation may come in several forms.
   1. Direct retaliation: Direct Retaliation means action taken against an employee or witness with respect to a term or condition of employment for the reason that the employee has opposed conduct that is prohibited under this policy or participated in an Equal Employment opportunity Commission investigatory process. Examples of direct retaliation are, but not limited to:
      1. Termination.
      2. Suspension
      3. Demotion
   2. Materially adverse retaliation: Materially adverse retaliation means any action that might deter a reasonable person from engaging in a EEO protected activity such as filing a complaint under this policy or participating in a workplace investigation. Examples of material adverse retaliation depend on the facts of the case and may include, but not limited to:
      1. work-related threats, warnings, or reprimands;
      2. negative or lowered evaluations;
      3. transfers to less prestigious or desirable work or work locations;
      4. making false reports to government authorities or in the media;
      5. filing a civil action;
      6. threatening reassignment; scrutinizing work or attendance more closely than that of other employees, without justification;
      7. removing supervisory responsibilities;
      8. engaging in abusive verbal or physical behavior that is reasonably likely to deter protected activity, even if it is not yet "severe or pervasive" as required for a hostile work environment;
      9. requiring re-verification of work status, making threats of deportation, or initiating other action with immigration authorities because of protected activity; or
      10. taking (or threatening to take) a materially adverse action against a close family member (who would then also have a retaliation claim, even if not an employee).
   3. Anticipatory Retaliation: The doctrine of anticipatory retaliation prohibits the employer from threatening adverse action against an employee who has not yet engaged in a protected activity for the purpose of discouraging him or her from doing so.
4. **Presiding officer duties.** As soon as practicable after the Legislature convenes in organizational session the Senate President and the Speaker of the House of Representatives shall each appoint the members of a special committee on conduct for their respective chambers. Each committee shall consist of an equal number of members from the majority party and the minority party. If a member of a special committee on conduct is the complainant or the person alleged to be involved in the harassment, the appropriate presiding officer shall discharge the member from the committee and appoint another member from the same party.

## Human Resources Manager duties.

* 1. The LAA Human Resources Manager shall provide notice to all members of the Legislature and employees of the Legislative Branch. Text of the notice is provided at the end of this policy document.
  2. The LAA Human Resources Manager shall ensure that the text of the notice set forth in paragraph (a) of this subsection is posted on the Legislative Intranet and in the employee handbooks.
  3. The LAA Human Resources Manager shall notify all employees that an employee who engages in harassment as described in this rule may be subject to discipline, including dismissal.
  4. The LAA Human Resources Manager shall notify all employees involved in any aspect of an investigation conducted under this rule that retaliating against a person for making a report or complaint of discrimination, workplace harassment or sexual harassment will not be tolerated and that employees engaging in harassing conduct in violation of this policy may be subject to disciplinary action, including dismissal.
  5. The LAA Human Resources Manager shall notify members and employees with supervisory responsibilities of their obligations under this policy.

Formal Notice:

If you believe you have been a victim of harassment, you have options. You can tell the alleged offender about the harassing conduct that disturbed you and ask the alleged offender to stop. You can communicate to the alleged offender in person or in writing. You may also use the informal report or formal complaint process set forth in Legislative Branch Sexual and Other Workplace Harassment policy to pursue a report or complaint of harassment if you:

1. Do not want to confront the alleged offender directly;
2. Have talked to the alleged offender and the harassing conduct has not stopped; or
3. Believe your report or complaint has resulted in retaliation.

In addition, you have the right to seek redress with Alaska Commission on Human Rights, The Federal Equal Employment Opportunity Commission or the Alaska Court System.