



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

Anti-Harassment Policy

From the Administrative and Financial Manual of the Senate
Adopted January 15, 2020

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Hawai‘i State Senate

Title 10. ANTI-HARASSMENT POLICY

This title establishes the Hawaii State Senate's policies and procedures governing the prohibition of harassment and other inappropriate conduct in the workplace. As set forth below, matters arising under this policy will be addressed on a case-by-case basis, in light of the specific circumstances of each case.

Chapter 1. Anti-Harassment Policy

Sec. 1.1. Policy.

It shall be the policy of the Hawaii State Senate to:

- (1) Promote a professional work environment where all members, employees, and individuals conducting business with the Senate are treated with dignity and respect;
- (2) Strictly prohibit Unlawful Sexual Harassment and Unlawful Harassment (as defined below), as well as unwelcome or offensive conduct based on a legally protected category, even if such conduct does not rise to the level of unlawful behavior;
- (3) Establish a procedure that will handle all reports of potential violations of the Senate's Anti-Harassment Policy in a confidential, proper, thorough, and respectful manner;
- (4) Provide for appropriate preventive, corrective and remedial measures, which could include disciplinary action or other sanction, if any violations of the Senate's Anti-Harassment Policy are determined to have occurred; and
- (5) Provide education and training to all members and employees regarding their responsibilities under this policy and for promoting an appropriate work environment.

Sec. 1.2. Duties and Responsibilities.

It shall be the duty of every member and employee of the Senate to:

- (1) Treat one another and any individual conducting business with the Senate with dignity and respect;
- (2) Avoid any comments or conduct in the workplace that reasonably could be construed as violating this policy;
- (3) Affirmatively discourage comments or conduct by others that potentially violate this policy;
- (4) Report potential violations of this policy promptly; and
- (5) Refrain from and prevent reprisals or retaliation against any member, employee, or individual conducting business with the Senate who makes a good faith report of discrimination, harassment or a potential violation of this policy or who participates in an investigation of such a report.

Sec. 1.3. Definitions.

- (1) Unlawful Sexual Harassment. Sexual harassment, in particular, has become the focus of much discussion and is a violation of federal and state law. Sexual harassment is a form of sex discrimination. "Unlawful Sexual Harassment" is defined as:

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual forms of harassment of a sexual nature when:

- A. Submission to the conduct is made either implicitly or explicitly a term or condition of employment; or
- B. Submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting that individual; or
- C. The conduct is severe or pervasive and has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.”

Scenarios A and B are called “quid pro quo” sexual harassment, where sexual favors are demanded in return for a job benefit (or in return for not imposing a job detriment). Scenario C is called “hostile work environment” sexual harassment.

Sexual harassment can occur regardless of the gender or gender identity of the perpetrator or the target. Sexual harassment therefore includes both same-sex harassment and opposite-sex harassment.

- (2) Unlawful Harassment. “Unlawful Harassment” is conduct which:
 - (a) Is unwelcome to a person who observes or experiences the conduct; and
 - (b) Is based on or reflects a legally protected category (e.g., race, sex/gender, pregnancy, sexual orientation, age, religion, color, national origin, ancestry, disability, marital status, arrest or court record, genetic information, gender identity or expression, domestic or sexual violence victim status, reproductive health decision, or any other category protected by law); and
 - (c) Is severe or pervasive; and
 - (d) Has the purpose or effect of unreasonably interfering with the performance of elected or job duties or creates an intimidating, hostile or offensive work environment.
- (3) Harassment in violation of this policy. This policy prohibits Unlawful Sexual Harassment, Unlawful Harassment, as well as inappropriate sexual or gender-based conduct, or conduct based on a legally protected category, in the workplace or adversely affecting the workplace, even if such conduct does not rise to the level of unlawful behavior.
- (4) Workplace. For purposes of this policy, the “workplace” is anywhere an employee is required to be in order to carry out his or her job responsibilities. The workplace sometimes may be off capitol grounds and may be outside normal working hours.
- (5) Good faith. “Good faith” means having an honest intention; for example, a complaint can be made in good faith even if it turns out to be incorrect or unsubstantiated; however, a maliciously false or made-up complaint is not one that is made in good faith.

Sec. 1.4. Prohibited Conduct.

- (1) This policy applies to conduct by anyone in the workplace, including Senate members, staff members (supervisors or non-supervisors), and non-employees such as vendors, lobbyists, contractors or members of the public.

- (2) Any Senate equipment, including communication and computer systems or hardware, must be used in compliance with this policy and with all other applicable Senate policies.
- (3) In some cases, off-duty conduct or conduct that occurs outside the workplace but that has an adverse effect on the workplace could violate this policy.
- (4) Conduct that potentially violates this policy may take many forms. It may include, but is not limited to, the following types of behaviors:
 - (a) Offensive or unwelcome nonverbal behavior such as leering, making obscene gestures or suggestive or insulting sounds with or without implied or expressed employment-related consequences, posting derogatory comments or pictures about an employee's or member's protected category on-line, including on social media;
 - (b) Offensive or unwelcome verbal behavior such as threats, insults, or derogatory comments based on a protected category; repeated suggestive comments, innuendos or propositions; or sexist, racist, or other remarks about a person or the person's body, clothing, sexual, or other activities; unwelcome jokes or nicknames based on a protected category; unwelcome terms of endearment; or
 - (c) Physical behavior including assaults, massages, patting, pinching, brushing up against another's body, or any form of unwelcome touching.
- (5) Because different people may have different perceptions about what behavior is unwelcome or may potentially violate this policy, members and employees should avoid any conduct that could reasonably be interpreted by others as a potential violation of this policy.
- (6) Conduct may potentially violate this policy if it is unwelcome or offensive to anyone who observes or experiences the conduct, even if that person is not the intended recipient or the target of the conduct.
- (7) Retaliation against any member, employee, or individual conducting business with the Senate who makes a good faith report of discrimination, harassment or a potential violation of this policy or who participates in an investigation of such a report is absolutely and strictly prohibited.

Sec. 1.5. Resolution Process for Reports under this Policy.

- (1) An individual who experiences or witnesses a potential violation of this Anti-Harassment Policy may raise the issue directly to the person who committed the potential violation (verbally or in writing). However, this is not required. If an individual does not wish to raise the issue directly, or if the conduct continues even after raising the issue directly, the individual must report the issue to one of the following:
 - (a) The employee's immediate supervisor; or
 - (b) A higher level supervisor; or
 - (c) The President of the Senate or the Equal Employment Opportunity ("EEO") Officer designated by the President;
 - (d) An individual who is not a member of the Senate or an employee of the Senate shall report to the EEO Officer or the President of the Senate.

If the person who committed the potential violation is the EEO Officer, the issue should be reported to the President of the Senate. If the person who committed the potential violation is the President of the Senate, the issue should be reported to the Vice President of the Senate and to the EEO Officer.

- (2) Concerns about potential violations of this policy should be raised and addressed promptly. An individual should not wait to raise an issue until he or she believes it has become severe or pervasive or a violation of law. The Senate intends to stop conduct *before* it rises to the level of a violation of law.
- (3) If a member or supervisor has reason to believe or has been provided information that this policy potentially has been violated, the member or supervisor shall immediately report the matter to the President or the EEO Officer (unless the alleged offender is the President or the EEO Officer, in which case reporting should be as set forth in the Section 1.5(1)). It is not for a legislator or supervisor to determine the validity or veracity of the potential violation of this policy prior to reporting it.
- (4) Upon receiving a report of a potential violation of this policy, either directly or indirectly, the President of the Senate or the EEO Officer (or, in an appropriate case, the Vice President of the Senate) shall promptly conduct an investigation. The investigation will be conducted as confidentially as possible, consistently with the Senate's need to apprise appropriate individuals of the allegations in order to fairly investigate. Investigation documents will be maintained confidentially on the same basis.
- (5) If a potential violation is substantiated, the Senate shall take appropriate corrective and remedial action to stop and remedy the conduct and prevent its reoccurrence. In the case of employees, the corrective or remedial action could range from informal counseling to termination of employment. Senate members shall be subject to the procedures and punishments outlined in the Rules of the Senate, Part IX, Rule 72.

Sec. 1.6. Other Remedies not Precluded.

The procedures and remedies under this policy do not prevent an aggrieved employee or member from seeking other remedies, which could include recourse to the Hawai'i Civil Rights Commission or Equal Employment Opportunity Commission.

This policy does not establish legal rights or remedies, which are governed by applicable state or federal laws.