

## **ANTI-HARASSMENT POLICY**

It is the policy of the New Mexico Legislature that all persons who work for the legislature or participate in the legislative process, whether in the State Capitol or another legislative setting, be able to do so in an environment in which they are treated with dignity and respect and that is free from all forms of harassment or discrimination. Through adoption, implementation and enforcement of this policy and through continuing education and training, the Legislature will seek to prevent, correct and discipline any behavior that violates this policy.

### **Harassment**

The Legislature prohibits harassment of any kind, including sexual harassment, and will take prompt and appropriate action in response to complaints or knowledge of violations of this policy. Harassment is any verbal or physical behavior that a reasonable person would find threatening, intimidating or coercive.

Harassment is a form of discrimination that is generally based on race, religion, color, national origin, age, ancestry, sex, sexual orientation, gender identity, physical or mental disability, serious medical condition or spousal affiliation. Harassment generally involves conduct, comment or display that a reasonable person would find insulting, intimidating, humiliating, hurtful, demeaning or degrading or that causes offense, discomfort or personal humiliation or embarrassment to a person or persons.

Harassment can include such behavior as slurs, demeaning jokes or comments, innuendoes, unwelcome compliments of a personal or intimate nature, use of racial or ethnic epithets or racially offensive words or phrases communicated in any language, cartoons, pictures, pranks, hazing, stereotyping comments, derogatory descriptions or other similar verbal, nonverbal or physical conduct. It is not necessary that the behavior be intentional to be considered harassment. Harassment can be a single serious incident or a series of incidents over time.

Under the Constitution of New Mexico, legal action generally cannot be taken against members of the Legislature for their legislative acts. Harassment does not include conduct, such as heated discussions, pointed questioning and vigorous attempts to persuade, which is generally accepted as a regular and necessary part of the legislative process.

### **Sexual Harassment**

Sexual harassment includes forms of harassment that can be quid pro quo (i.e., this for that) or a hostile work environment (i.e., intimidating, offensive or demeaning environment in which to work) and warrants separate emphasis. Complaints of sexual harassment will be evaluated using a reasonable person standard.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature when:

1. submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment;
2. submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting that person;
3. submission to or rejection of such conduct by a person is used as the basis for decisions or actions related to the support or opposition of legislation or other legislative processes; or
4. such conduct has the purpose or effect of interfering with a person's work or creating an intimidating, hostile or offensive working environment.

The following are examples of conduct that may constitute sexual harassment under this policy:

Verbal harassment — requests or demands for any type of sexual favor; repeated requests for a date; sexual innuendoes; suggestive comments; use of sexually offensive words or phrases in any language; jokes of a sexual nature; or "kidding", teasing and threats, any of which are unwelcome and sexual in nature.

Nonverbal harassment — distribution or display (including written, hard copy or electronic communications) of any graphic material, such as calendars, posters and cartoons, that is sexual in nature; or insulting sounds, leering, staring, whistling and obscene gestures.

Physical harassment — unwelcome physical contact, such as touching, tickling, pinching, hugging, patting, cornering, kissing, fondling and forced sexual intercourse or assault.

### **Reporting Harassment**

A person who has experienced or observed harassment is strongly encouraged to identify the offensive behavior and advise the offender to stop and to report the harassment as provided in this policy. Legislative staff in supervisory positions have a duty to report harassment as provided in this policy. Early reporting and intervention have proven to be the most effective way to resolve actual or perceived incidents of harassment. Delays in reporting harassment can affect the ability to take appropriate action and resolve the matter. Accordingly, reports of harassment should be made as soon as possible after experiencing or observing the harassment so that prompt and appropriate action can be taken.

A legislative employee with a workplace harassment complaint may pursue the complaint with the U.S. Equal Employment Opportunity Commission and New Mexico's Human Rights Commission as provided by law.

Sexual assault should be reported to law enforcement immediately.

## **Confidentiality**

A report or complaint of harassment and documents related to any investigation shall be maintained confidentially to the extent possible pursuant to applicable law, rule or policy, including the Inspection of Public Records Act. The expressed wishes of the person reporting or complaining will be considered in the context of the legal obligation to act on the allegations and the right of the respondent to obtain information.

## **No Retaliation**

The Legislature prohibits any retaliation against any person who reports harassment or files a complaint or cooperates as a witness under this policy.

## **Complaint Procedure**

### **Complaints against legislative staff**

If the person alleged to have violated this policy is a legislative employee or working for the Legislature (including year-round, temporary or contract), the person making a complaint of harassment may report it to the employee's agency director, chief clerk or any legislative staff in a supervisory position. The person receiving the complaint shall promptly cause an investigation to be conducted and may delegate the investigation to a person with appropriate training, including an assistant or deputy director, a deputy chief clerk or outside counsel who is experienced in employment law and in the investigation of claims of harassment. Each complaint shall be investigated promptly, impartially and discreetly. The investigation shall begin within five business days of having received the complaint. The individual responsible for the investigation shall keep the complainant and respondent advised of the status of the investigation, notify them when the investigation is complete and advise them of corrective action to be taken, if any. Disciplinary action against a legislative employee who is found to have violated this policy includes verbal reprimand, written reprimand, suspension or termination. The complainant and the respondent may appeal within 10 calendar days, in which case an individual who is experienced in the investigation of harassment matters and was not involved in the initial investigation will review the investigation to determine if it is satisfactory or if further action is required. A record of each complaint and resolution shall be provided to and maintained by the Legislative Council Service.

### **Complaints against a person who is not a legislator or a legislative employee**

If the person alleged to have violated this policy is not a legislator or a legislative employee (e.g., a member of the public, a lobbyist or a vendor), the person making the complaint shall report it to an agency director, chief clerk, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, one of the floor leaders of the House or Senate or legislative staff in a supervisory role. The person receiving the complaint shall promptly cause an investigation to be conducted and may delegate the investigation to a person with appropriate training, including an assistant or deputy director, a deputy chief clerk or outside counsel who is experienced in employment law and in the investigation of claims of harassment. Each complaint shall be investigated promptly, impartially and discreetly. The investigation shall

begin within five business days of having received the complaint. The individual responsible for the investigation shall keep the complainant and respondent advised of the status of the investigation, notify them when the investigation is complete and advise them of the corrective action to be taken, if any. The complainant and the respondent shall be informed of the results and may appeal within 10 days, in which case an individual who is experienced in the investigation of harassment matters and was not involved in the initial investigation, recommendation or corrective action will review the investigation to determine if it is satisfactory or if further action is required. Disciplinary action against a member of the public who is found to have violated this policy includes any appropriate action authorized by law, including a protective order, removal from or denying access to legislative buildings or activities and notifying the individual's employer or clients. A record of each complaint and resolution shall be maintained by the Legislative Council Service.

#### Complaints against a member of the Legislature

If the person alleged to have violated this policy is a member of the Legislature, and the person making the complaint is a legislative employee or working for the Legislature (including year-round, temporary or contract), the person making the complaint may report it to the employee's agency director, chief clerk or any legislative staff in a supervisory position. If the person making the complaint is anyone other than a legislative employee, the person making the complaint shall report it to the Director of the Legislative Council Service or the respective chief clerk. If the complaint is against a member of the House, the person receiving the complaint shall report it to the Speaker of the House of Representatives and the floor leaders of the House; if the complaint is against a member of the Senate, the person receiving the complaint shall report it to the President Pro Tempore of the Senate and the floor leaders of the Senate.

If the person making the complaint requests that the complaint be resolved informally, the respective legislative leaders shall investigate the complaint, and if the complaint is resolved to the satisfaction of the complainant and respondent, a record of the resolution shall be filed with and maintained by the Legislative Council Service, which shall remain confidential; provided that the record may be considered in a subsequent investigation to establish a pattern of conduct of a respondent. If the complaint is not resolved to the satisfaction of the person making the complaint or the person against whom a complaint is made, or the person making the complaint makes a formal written complaint, the respective legislative leaders shall consult with outside counsel who is experienced in [employment] discrimination law and in the investigation of claims of harassment [and]. The respective leaders and outside counsel shall determine whether the complaint should be investigated further. If any one of the legislative leaders or outside

counsel determines that the complaint should be investigated further, the complaint shall be forwarded to an investigative subcommittee of the appropriate ethics committee within five business days. The investigative subcommittee shall retain a licensed attorney, who has experience in harassment claims and is without any current or previous involvement with the matter, to serve as an additional voting member of the investigative subcommittee. That additional voting member shall serve as the chair of the investigative subcommittee.

The investigative subcommittee shall retain special counsel, who has experience in the investigation of harassment claims and shall not be the same person as outside counsel, to investigate the complaint and submit to the subcommittee a report containing the special counsel's findings, conclusions and recommendations regarding further action. If the person making the complaint did not submit a formal written and sworn statement verifying the truthfulness of the allegations in the complaint, the special counsel must obtain such a written, sworn statement from the complainant before making a formal recommendation to the subcommittee. The special counsel shall recommend dismissal of a complaint if the person making the complaint does not submit such a written, sworn statement.

[Upon] The special counsel conducting the investigation shall make every effort to complete the investigation and submit a report to the investigative subcommittee within 45 days from the date the special counsel is retained. If the report is not completed within 45 days, the special counsel shall advise the investigative subcommittee, complainant and respondent of the status of the investigation and the estimated time needed to complete the investigation. The special counsel shall similarly notify the investigative subcommittee, complainant and respondent every 15 days thereafter until the investigation is complete. Within 15 days of receipt of the special counsel's recommendations, the investigative subcommittee shall determine whether probable cause exists to believe a formal charge is warranted.

If the investigative subcommittee determines that probable cause does not exist, the investigative subcommittee shall immediately close the investigation, dismiss the complaint and so inform the complainant, the legislator against whom the complaint is filed and the appropriate ethics committee during the interim or standing committee during the session. The appropriate interim

ethics committee receiving such notice during the interim shall issue a public report of the investigative subcommittee's determination within 10 days.

If the investigative subcommittee determines probable cause exists, it shall cause to be prepared and presented a charging document to the appropriate ethics subcommittee during the interim or standing committee during session. ~~[The ethics subcommittee or]~~ If the matter is referred to a standing committee, that standing committee shall [hear] handle the matter in accordance with its procedures and make a recommendation to the body. If the matter is referred to the appropriate ethics hearing subcommittee during the interim, that subcommittee shall set the matter for a formal hearing to occur within 45 days of the investigative subcommittee's finding of probable cause, unless good cause is shown to extend the hearing date. Before the hearing, the hearing subcommittee shall retain an attorney, retired judge or justice, who is without any current or previous involvement with the matter, to serve as an additional voting member of the hearing subcommittee. That additional voting member shall serve as the chair of the hearing subcommittee. The hearing subcommittee shall determine whether a preponderance of the evidence supports that the legislator against whom the complaint is filed has committed an offense that justifies the imposition of sanctions.

Sanctions against a legislator who is found to have violated this policy include reprimand, censure or expulsion. Sections 2-15-7 through 2-15-12 NMSA 1978; Senate Rules 9-13-1 through 9-13-6; House Rules 9-13-1 through 9-13-7; or Legislative Council Policy No. 15 shall apply to the process regarding complaints against legislators, as appropriate for the respective legislative body and whether in session or during the interim. An ethics committee or subcommittee reviewing a complaint pursuant to this policy during the session shall follow rules of procedure required of the respective House or Senate standing committees, in addition to the procedures provided in this policy. An ethics committee or subcommittee reviewing a complaint pursuant to this policy during the interim shall follow the rules of procedure provided in Legislative Council Policy No. 15, in addition to the procedures provided in this policy. A record of each complaint and resolution shall be maintained by the Legislative Council Service.

### Implementation of This Policy

The Legislature will ensure that this policy is disseminated and posted on the Legislature's website, included in the appropriate employee handbooks and posted throughout the State Capitol. The policy shall be reviewed at least once every two years. All legislators and employees must be trained on the policy for a minimum of four hours every two years by an individual or entity that specializes in harassment prevention.

A complaint of harassment or other information provided in support of the complaint that is found to be intentionally or recklessly dishonest or malicious will be deemed a violation of this policy. (As amended [~~January 20, 2020~~] October 11, 2022.)

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I acknowledge receipt of the Anti-Harassment Policy:

Signature	Printed name	Date
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