



Prepared for: Joint Committee on Capitol Culture

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Legislative Branch Personnel Rule 27 is the Legislative Assembly's Harassment-Free Workplace rule. The current version of the rule was adopted in [Enrolled House Concurrent Resolution 11 \(2019\)](#). [House Concurrent Resolution 20 \(2019\)](#) is before the Joint Committee on Capitol Culture. The below table compares the procedural components of the two resolutions.

**Table 1: A Procedural Comparison, Legislative Branch Personnel Rule 27**

	<b>House Concurrent Resolution 20 -as introduced</b>	<b>Legislative Branch Personnel Rule 27 -as amended by House Concurrent Resolution 11</b>
<b>General Provisions</b>		
Who may report harassment?	Any person	Legislators and legislative staff, including interns and volunteers
Who may be the subject of a report of harassment?	Legislators, legislative staff, including interns, externs and volunteers, registered lobbyists, contractors, state employees and members of the public who are present in the Capitol	Legislators and legislative staff, including interns and volunteers
How does a person make a report?	Three reporting avenues: 1) Confidential disclosures; 2) Nonconfidential reports; and 3) Formal complaints	Two reporting avenues: 1) Informal reports; and 2) Formal complaints
What are the time limits on making a report?	No limit	Four years

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<b>Reporting Mechanisms</b>		
<b><i>Nonconfidential Reports</i></b>		
Who must, and who may, make a nonconfidential report and what procedures apply?	<p>Legislators and supervisors must report any observations or information that they reasonably believe may constitute harassment.</p> <p>Any other person who experiences or observes harassment may choose to make a nonconfidential report.</p> <p>Legislative Equity Office (LEO) reviews report to determine if investigation is warranted. If unwarranted, investigator may engage in corrective coaching, provide training and guidance, or take any other action. If warranted, an investigation is conducted.</p>	<p>Legislators and supervisors must report harassing conduct to the Human Resources (HR) Director or the Legislative Counsel (LC).</p> <p>Legislators and supervisors must take “appropriate action to prevent, promptly correct and report harassment about which [they] knew or, with the exercise of reasonable care, should have known.”</p>

	<b>House Concurrent Resolution 20</b> -as introduced	<b>Legislative Branch Personnel Rule 27</b> -as amended by House Concurrent Resolution 11
<b><i>Confidential Reports</i></b>		
If a person who experiences or observes harassment chooses to make a confidential report, what procedures apply?	<p>The LEO:</p> <ul style="list-style-type: none"> <li>• Shall advise person of state and federal options with BOLI, EEOC, law enforcement and courts, and all options available under the rule.</li> <li>• Shall disclose information if required by law.</li> <li>• May conduct training or corrective coaching.</li> <li>• May encourage persons who previously made confidential report to make nonconfidential report or formal complaint.</li> <li>• May disclose information if threat of immediate physical harm or harm described in ORS 40.252.</li> <li>• If requested, may opine on whether fact patterns constitute conduct that is prohibited under rule.</li> <li>• If requested, shall refrain from documenting reporter's identity.</li> </ul>	<p>If person wishes to "remain anonymous or wishes that no action be taken, the Human Resources Director or the Legislative Counsel shall determine appropriate action."</p> <p>"Certain Legislative Branch records are subject to public records requests under ORS 192.410 to 192.505."</p> <p>"...with consent from the party making the report, [HR or Legislative Counsel must provide notice] of the fact that a report has been made and the name of the reporting party" to the:</p> <ul style="list-style-type: none"> <li>• Caucus leader, who must notify legislator-respondent.</li> <li>• Presiding officer, who must notify caucus leader-respondent, agency head-respondent or parliamentarian-respondent</li> <li>• Appointing authority, who must notify legislative employee-respondent</li> </ul>

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<b><i>Formal Complaints</i></b>		
If a person who experiences or observes harassment chooses to make a formal complaint, what procedures apply?	<p>The complaint must:</p> <ul style="list-style-type: none"> <li>• Be in writing.</li> <li>• Identify the complainant and respondent.</li> <li>• Set forth facts and circumstances.</li> <li>• Be submitted under penalty of perjury.</li> </ul> <p>The complaint is provided to the respondent and:</p> <ul style="list-style-type: none"> <li>• A caucus leader or the presiding officer, if the respondent is a legislator.</li> <li>• A supervisor, if the respondent is legislative staff.</li> <li>• The Legislative Administrator, if the respondent is any other person.</li> </ul> <p>An investigation must be conducted.</p>	<p>The complaint must:</p> <ul style="list-style-type: none"> <li>• Be in writing.</li> <li>• Identify the complainant, respondent and witnesses.</li> <li>• Describe conduct, including date and time.</li> <li>• Describe a potential remedy desired by the complainant.</li> </ul> <p>The complaint is provided to the respondent and:</p> <ul style="list-style-type: none"> <li>• A caucus leader, if the respondent is a legislator or partisan staffer.</li> <li>• An agency head, if the respondent is a nonpartisan staffer.</li> <li>• Presiding officer, if the respondent is a caucus leader, parliamentarian, agency head or HR director.</li> </ul> <p>An investigation must be conducted.</p>

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<b>Investigations</b>		
When is an investigation conducted?	<p>Promptly after receipt of a formal complaint.</p> <p>When a nonconfidential report is made and the LEO investigator determines an investigation is warranted.</p>	<p>Within 10 days after receipt of a formal complaint.</p> <p>In the absence of a complaint, "...Employee Services, in consultation with the Legislative Counsel, shall investigate instances of severe or pervasive harassment or discrimination based on a protected class..."</p>
Who conducts the investigation?	<p>If the respondent is a legislator, or specified staff member, an outside investigator.</p> <p>Otherwise, the LEO investigator or an outside investigator selected by the LEO investigator.</p>	<p>If the respondent is a legislator, an outside investigator.</p> <p>Otherwise, an employee of HR or LC or an outside investigator selected by HR or LC.</p>
How long is the investigation?	<p>84-day maximum, that may be extended by LEO, if investigator provides the complainant and respondent with an explanation justifying the extension.</p> <p>Investigator must regularly keep complainant and respondent apprised of investigation timeline and status.</p>	<p>60-day maximum, that may be extended by HR or LC.</p>
What is included in the investigative report?	<ul style="list-style-type: none"> <li>• Findings of fact; and</li> <li>• If the respondent is not a legislator, a determination of whether the facts constitute a violation of the rule.</li> </ul>	<ul style="list-style-type: none"> <li>• Findings of fact; and</li> <li>• Recommendations.</li> </ul>

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Is the investigative report subject to review by the parties?	Parties have seven days to respond to investigator's draft report. Investigator must consider responses before producing final investigative report.	Parties have five days to request modifications to findings of fact. Modifications may be granted by HR or LC within 10 days.
<b><i>Safety Measures</i></b>		
May safety measures be put in place, pending an investigation?	<p>Yes, the investigator may make safety recommendations to:</p> <ul style="list-style-type: none"> <li>• The conduct committee, if the respondent is a legislator.</li> <li>• The respondent's supervisor, if the respondent is legislative staff.</li> <li>• The respondent's supervisor and agency director, if the respondent is an executive or judicial branch employee.</li> <li>• The legislative administrator, if the respondent is a lobbyist, contractor or member of the public.</li> </ul>	Yes, HR or LC "shall immediately take appropriate action to ensure that the reporting party has a safe and nonhostile work environment."

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<b>Remedies</b>		
<b><i>Legislators</i></b>		
How are remedies imposed?	<p>Final investigative report provided to parties and House or Senate Conduct Committee. Committee holds hearing within 28 days of receipt of report.</p> <p>Parties may submit written challenge to factual findings to Committee.</p> <p>Parties may submit evidence and suggest witnesses. Only committee members may call and question witnesses.</p> <p>The Committee:</p> <ul style="list-style-type: none"> <li>• Determines facts.</li> <li>• Determines whether the facts constitute a violation of the rule.</li> <li>• Imposes or recommends a specific remedy.</li> </ul>	<p>Final investigative report to House or Senate Conduct Committee. Committee holds hearing 14 to 45 days after receiving report.</p> <p>Parties may submit evidence and suggest witnesses. Only committee members may call and question witnesses.</p> <p>Committee shall deliberate and report a recommendation. Parties may request review of committee recommendation, which must be finalized within 20 days.</p>
What remedies may be imposed?	<p>The Conduct Committee may impose any appropriate remedy, except:</p> <ul style="list-style-type: none"> <li>• Expulsion must be recommended to the full House or Senate and must receive a two-thirds vote.</li> <li>• Removal from committee must be recommended to the Presiding Officer.</li> </ul>	<p>Committee may recommend:</p> <ul style="list-style-type: none"> <li>• Reprimand.</li> <li>• Censure.</li> <li>• Expulsion.</li> <li>• No action.</li> </ul> <p>Chamber must take action on recommendation the next day it convenes. May only impose sanction pursuant to two-thirds vote.</p>

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<b><i>Legislative Employees</i></b>		
How are remedies imposed?	<p>Final investigative report provided to parties and supervisor.</p> <p>If the respondent is a partisan employee, final report also provided to Senate or House Conduct Committee.</p> <p>Supervisor must make decision to accept or reject investigative findings and determine appropriate remedy within 14 days.</p> <p>If respondent is partisan employee, Conduct Committee makes remedy recommendation to legislative employer within 7 days. Conduct Committee may modify remedial measures imposed by legislative employer.</p> <p>Partisan and nonpartisan employees may appeal to House or Senate Conduct Committee.</p>	<p>Final investigative report provided to parties and supervisor.</p> <p>Supervisor required to act on recommendations as soon as practicable.</p>



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<b><i>Lobbyists, contractors and members of the public</i></b>		
	<p>If respondent is a state employee in the executive or judicial branch, final investigative report is provided to respondent's supervisor and agency director.</p> <p>For all other persons, the final investigative report provided to parties and to Legislative Administrator.</p> <p>Legislative Administrator provides notice of proposed remedy to respondent and respondent's employer within 14 days and imposes a remedy within 28 days.</p>	N/A

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<b>Confidentiality</b>		
What confidentiality provisions apply to an investigation?	LEO required to maintain records and information confidentially, except LEO may notify appointing authorities, caucus leader and Joint Committee on Conduct.	For an informal report, all members and employees involved in the investigation, except for individuals directly involved in the underlying incident, are required to keep information confidential.
What records are subject to public disclosure?	<ul style="list-style-type: none"> <li>• A formal complaint is immediately subject to disclosure.</li> <li>• Records relating to an ongoing investigation are maintained in confidence.</li> <li>• Final investigative report is subject to disclosure when investigation is concluded.</li> <li>• Confidential disclosures, confidential process counseling and nonconfidential reports that do not result in an investigation are confidential.</li> </ul>	<p>“Certain Legislative Branch records are subject to public records requests under ORS 192.410 to 192.505.”</p> <p>See, e.g. ORS 192.345 (12) (exempting from public disclosure a “personnel discipline action, or materials or documents supporting that action,” unless the public interest requires disclosure in the particular instance.)</p>