

House Concurrent Resolution 28

Sponsored by Representative MOORE-GREEN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits Senate and House Committees on Conduct from meeting using virtual or electronic means. Requires Senate and House Committees on Conduct to meet in person at Capitol on week-days during specified hours.

CONCURRENT RESOLUTION

Be It Resolved by the Legislative Assembly of the State of Oregon:

That Legislative Branch Personnel Rule 27, as amended and in effect on August 10, 2020, is further amended, and Legislative Branch Personnel Rule 27-B is adopted, as follows:

Legislative Branch Personnel Rule 27: Safe, Respectful and Inclusive Workplace.

(1) Policy.

(a) The Legislative Branch is committed to promoting a respectful and inclusive environment in the State Capitol and in any setting in which conduct has the ability to create a Capitol environment that is intimidating, hostile or offensive, or may constitute conduct that amounts to retaliation for the making of a good-faith complaint under this rule or for participation in an investigation under this rule.

(b) The Legislative Branch is committed to providing a safe and respectful workplace and to taking proactive steps to improve its culture so that behavior from any source that has a negative impact on the workplace may be effectively reported and promptly addressed and resolved.

(c) The Legislative Branch is equally committed to protecting freedom of speech and expression, as guaranteed to all persons through the free expression protections of Article I, section 8, of the Oregon Constitution, and through the First Amendment to the United States Constitution, and the Legislative Branch recognizes that the constitutional protections guaranteeing freedom of speech and expression must be taken into account in determining the rights afforded to individuals in the State Capitol under this rule.

(d) The Legislative Branch emphasizes the importance of fostering an environment where all viewpoints are welcomed and respected, as disagreement does not equal harassment.

(e) Members of the Legislative Assembly 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 at any event at which legislative business is conducted.

(f) This rule is designed to provide options to those who are experiencing or observing harassing behavior, discriminatory behavior or other behavior prohibited by subsection (7) of this rule to seek information, report behaviors or file complaints to address and resolve concerns, while also:

(A) Enhancing options available to victims who seek to remain anonymous; and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (B) Ensuring that fundamental freedoms of speech and expression are protected as core values
2 in the Legislative Branch.

3 (g) This rule is designed to provide options to those who are experiencing or observing harass-
4 ing behavior, discriminatory behavior, retaliation or other behavior prohibited by subsection (8) of
5 this rule to seek information, report behaviors or file complaints to address and resolve concerns,
6 while also enhancing options available to victims who seek to remain anonymous.

7 (h) The Legislative Assembly intends the mandatory reporting obligations established under this
8 rule to be a means by which the Legislative Branch will take action to address conduct prohibited
9 by this rule, in the absence of a specific complaint about the conduct.

10 (2) Application.

11 (a) Any individual who experiences behavior prohibited by this rule or observes behavior in-
12 consistent with this rule may use the reporting options described in subsections (10) to (12) of this
13 rule.

14 (b) An appointing authority or a nonpartisan staff supervisor, including any member of the
15 Legislative Assembly, shall report behavior prohibited by this rule by the means described in sub-
16 section (11) of this rule. If the appointing authority or supervisor is making a report because an
17 individual has disclosed to the appointing authority or supervisor that the individual may be expe-
18 riencing conduct prohibited by this rule, the appointing authority or supervisor, as soon as practi-
19 cable after receiving the disclosure, shall provide a copy of the materials described in Legislative
20 Branch Personnel Rule 32 (4)(a)(B) to (D) to the individual making the disclosure.

21 (c) Any individual over whom the Legislative Branch may impose a remedy is an individual
22 subject to the requirements of this rule, including but not limited to:

23 (A) Members of the Legislative Assembly;

24 (B) Legislative staff, interns, externs and volunteers;

25 (C) Lobbyists required to register under ORS 171.740;

26 (D) Contractors or employees of contractors who engage in business with the Legislative
27 Branch;

28 (E) Employees of the State of Oregon who are not employees of the Legislative Branch; and

29 (F) Members of the public who are present in the State Capitol.

30 (3) Definitions.

31 (a) "Agency head" means the Legislative Administrator, the Legislative Counsel, the Legislative
32 Equity Officer, the Legislative Fiscal Officer, the Legislative Policy and Research Director, the
33 Legislative Revenue Officer and the Executive Director of the Commission on Indian Services.

34 (b) "Appointing authority" means the person who has authority in the interest of the employer
35 to hire, transfer, suspend, lay off, promote, terminate or discipline an employee.

36 (c) "Caucus leader" means the Democratic or Republican leader of the Senate or the Democratic
37 or Republican leader of the House of Representatives.

38 (d) "Caucus office" means the office of the Democratic or Republican leader of the Senate or the
39 office of the Democratic or Republican leader of the House of Representatives.

40 (e) "Chamber" means the Senate or the House of Representatives.

41 (f) "Complainant" means a person who has filed a conduct complaint under subsection (12) of
42 this rule.

43 (g) "Employee" means an employee who is performing services on behalf of the Legislative
44 Branch. "Employee" includes any intern, extern or volunteer who is affiliated with a Legislative
45 Branch office.

1 (h) "Employee Services" means the division of Legislative Administration charged with employ-
2 ment and human resources administration for the Legislative Branch.

3 (i) "Human Resources Director" means the manager of Employee Services.

4 (j) "Impacted party" means a person who is described in a conduct report made under subsection
5 (11) of this rule as one who has experienced behavior prohibited by this rule.

6 (k) "Independent investigator" or "investigator" means an investigator under contract pursuant
7 to ORS 173.912, who is available to perform or is performing an investigation under this rule.

8 (L) "Legislative Branch" means members and employees of the Legislative Assembly, the par-
9 liamentary offices, Legislative Administration, the Legislative Counsel Office, the Legislative Equity
10 Office, the Legislative Fiscal Office, the Legislative Policy and Research Office, the Legislative Re-
11 venue Office and the Commission on Indian Services.

12 (m) "Legislative Equity Officer" means the Legislative Equity Officer appointed under ORS
13 173.900 or an acting equity officer serving under ORS 173.906.

14 (n) "Member of the Legislative Assembly" or "member" means a Senator or a Representative.

15 (o) "Nonpartisan staff" means an employee of the parliamentary offices, Legislative Adminis-
16 tration, the Legislative Counsel Office, the Legislative Equity Office, the Legislative Fiscal Office,
17 the Legislative Policy and Research Office, the Legislative Revenue Office or the Commission on
18 Indian Services.

19 (p) "Offsite process counselor" means a person unaffiliated with the Legislative Branch who has
20 entered into a contract with the Legislative Equity Officer under ORS 173.930 to provide services
21 described in subsection (10) of this rule.

22 (q) "Parliamentarian" means the Secretary of the Senate or the Chief Clerk of the House of
23 Representatives.

24 (r) "Parliamentary office" means the Office of the Secretary of the Senate or the Office of the
25 Chief Clerk of the House of Representatives.

26 (s) "Partisan staff" means an employee working directly for a member of the Legislative As-
27 sembly, an employee of a caucus office or an employee of the office of the Senate President or the
28 office of the Speaker of the House of Representatives.

29 (t) "Protected class" means a classification established by law that offers protections to mem-
30 bers of the classification, including but not limited to:

31 (A) Sex;

32 (B) Race;

33 (C) Ethnicity;

34 (D) National origin;

35 (E) Age;

36 (F) Religion;

37 (G) Marital status;

38 (H) Sexual orientation;

39 (I) Gender identity or expression;

40 (J) Engaging in whistleblowing activity;

41 (K) Opposing an employer's actions when the employee reasonably believes the actions to be
42 unlawful;

43 (L) Taking leave from work for purposes protected by law, including but not limited to leave
44 under the Oregon Family Leave Act, the federal Family and Medical Leave Act or disability-related
45 leave;

1 (M) Injured worker status;

2 (N) Disability; or

3 (O) Veteran status.

4 (u) "Respondent" means a person named in a conduct complaint made under subsection (12) of
5 this rule as engaging in behavior that is prohibited by this rule or a person who is the subject of
6 an investigation under subsection (14) of this rule to determine whether the person engaged in be-
7 havior that is prohibited by this rule.

8 (v) "Supervisor" means an employee of the Legislative Branch who manages or directs the work
9 of another employee of the Legislative Branch.

10 (4) Harassment and hostile work environment.

11 (a) An individual engages in harassment by engaging in verbal or physical conduct, including
12 making a visual display or causing a visual display to be shown, that denigrates or shows hostility
13 toward an individual or group of individuals. Examples of harassment may include, but are not lim-
14 ited to:

15 (A) Name-calling, slurs or stereotyping;

16 (B) Threatening, intimidating or hostile acts that relate to a protected class;

17 (C) Belittling, demeaning or humiliating a person or group of persons because of a protected
18 class; or

19 (D) Displaying written or graphic material that is described in subparagraphs (A) to (C) of this
20 paragraph.

21 (b) Harassment does not include every minor annoyance or disappointment that an employee
22 may encounter in the course of performing the employee's job.

23 (c) An individual creates a hostile work environment by engaging in behavior that is unwelcome
24 and is so severe or pervasive that it either affects a person's ability to function in the workplace
25 or denies a person the benefits of the workplace.

26 (5) Sexual harassment.

27 (a) An individual engages in sexual harassment when the individual engages in unwelcome con-
28 duct of a sexual nature, including but not limited to sexual advances, requests for sexual favors,
29 sexual comment, unwanted or offensive touching or physical contact, unwanted closeness, impeding
30 or blocking movement, sexual gesture, sexual innuendo, sexual joke, sexually charged language, in-
31 timate inquiry, persistent unwanted courting, sexist insult, gender stereotype, or other verbal or
32 physical conduct of a sexual nature, if:

33 (A) Submission to the conduct is made either explicitly or implicitly a term or condition of a
34 person's employment;

35 (B) A person expressly or by implication conveys that declining to submit to the conduct will
36 affect an individual's job, leave request, benefits, business before the Legislative Assembly, influence
37 or opportunity of the individual to engage professionally with the Legislative Assembly, its members
38 or staff; or

39 (C) The unwelcome conduct has the purpose or effect of unreasonably interfering with a person's
40 job performance, or creates a work environment that a reasonable person would find intimidating,
41 hostile or offensive. For purposes of this rule, "unwelcome conduct" means conduct that an indi-
42 vidual does not solicit and that the individual regards as undesirable or offensive. An individual may
43 withdraw consent to conduct that was previously welcomed, though a withdrawal of consent must
44 be communicated to the person for whom consent is being withdrawn.

45 (b) Sexual harassment includes but is not limited to:

- 1 (A) Unwanted sexual advances, flirtations or propositions.
2 (B) Demands for sexual favors in exchange for favorable treatment or continued employment.
3 (C) Sexual jokes.
4 (D) Verbal abuse of a sexual nature.
5 (E) Verbal commentary about the body, sexual prowess or sexual deficiency of an individual.
6 (F) Leering, whistling, touching or physical assault.
7 (G) Using sexually suggestive, insulting or obscene comments or gestures.
8 (H) Displaying sexually suggestive objects or pictures.
9 (I) Sending or forwarding electronic mail or other communications of an offensive or graphic
10 sexual nature.
11 (J) Discriminatory treatment based on sex.
- 12 (c) Sexual harassment includes any conduct described in subsection (4) of this rule that is based
13 on sex.
- 14 (6) Retaliation.
- 15 (a) A person engages in retaliation if the person treats another individual less favorably because
16 the individual made a good-faith complaint about conduct prohibited by this rule or participated in
17 an investigation about conduct that is prohibited by this rule.
- 18 (b) A person engages in retaliation if the person treats another individual less favorably because
19 that individual engaged in a process described in this rule or implemented one or more provisions
20 of this rule.
- 21 (c) A person engages in retaliation if the person treats another individual less favorably because
22 the individual made a good-faith complaint or took other action to address conduct prohibited in any
23 respectful workplace policy adopted by the Joint Committee on Conduct under ORS 173.900, or this
24 rule.
- 25 (7) Examples.
- 26 (a) The Legislative Equity Officer shall develop and propose to the Joint Committee on Conduct
27 examples of what constitutes harassment, a hostile work environment, sexual harassment and retal-
28 iation under this rule. The committee shall approve, modify or reject proposed examples presented
29 to the committee.
- 30 (b) The Legislative Equity Officer shall maintain and publish examples of what constitutes
31 harassment, a hostile work environment, sexual harassment and retaliation that have been approved
32 by the committee under this subsection.
- 33 (8) Prohibitions.
- 34 The Legislative Branch prohibits conduct that:
- 35 (a) Constitutes harassment and creates a hostile work environment;
36 (b) Constitutes sexual harassment and creates a hostile work environment;
37 (c) Constitutes an unlawful practice that aids or abets discrimination in a place of public ac-
38 commodation under the laws of the state; or
39 (d) Is retaliation.
- 40 (9) Reporting options and follow-up.
- 41 (a) In order to encourage participation and effectiveness, this rule establishes three options for
42 reporting behavior prohibited by this rule:
- 43 (A) A confidential disclosure process described in subsection (10) of this rule;
44 (B) A conduct reporting process described in subsection (11) of this rule; and
45 (C) A conduct complaint process described in subsection (12) of this rule.

1 (b) In each case of a disclosure, report or complaint made under this rule, the Legislative Equity
2 Officer or the independent investigator, whichever is appropriate, shall follow up with the individual
3 who experienced, or believes they experienced, conduct prohibited by this rule, at least once every
4 three months for the year following the disclosure, report or complaint, to determine whether the
5 alleged prohibited conduct has stopped and to determine whether the individual has experienced
6 retaliation. The officer or investigator shall give the individual written notice at the outset of the
7 follow-up period that follow-up described in this paragraph will occur unless the individual requests
8 in writing that the officer or investigator not follow up.

9 (10) Confidential disclosure process.

10 (a) Any individual who experiences behavior prohibited by this rule or observes behavior that
11 is inconsistent with this rule may make a confidential disclosure reporting the behavior to the
12 Legislative Equity Officer or an offsite process counselor.

13 (b) Information reported to the Legislative Equity Officer or offsite process counselor, records
14 created by the officer or counselor and the identity of the individual making a disclosure under this
15 subsection are confidential and may not be disclosed by the officer or counselor, except that the
16 officer or counselor:

17 (A) May disclose information if the officer or counselor reasonably concludes that a threat of
18 immediate physical harm or other harm described in ORS 40.252 would exist if the disclosure were
19 not made;

20 (B) Shall disclose information if required by law;

21 (C) May disclose nonpersonally identifiable data to facilitate the Legislative Branch's identifi-
22 cation of training and coaching needs; and

23 (D) May disclose nonpersonally identifiable information to an individual who has made a confi-
24 dential disclosure under this subsection for the purpose of encouraging the individual to make a
25 conduct report under subsection (11) of this rule or a conduct complaint under subsection (12) of this
26 rule.

27 (c) Notwithstanding paragraph (b) of this subsection:

28 (A) The Legislative Equity Officer may disclose nonpersonally identifiable information in the
29 course of performing corrective coaching for an individual subject to the requirements of this rule.

30 (B) The Legislative Equity Officer or offsite process counselor may not disclose information or
31 records to an independent investigator, except that nonpersonally identifiable information may be
32 disclosed to facilitate the taking of any action that is consistent with this rule and with the princi-
33 ples of the Due Process Clause of the United States Constitution.

34 (d) As an initial matter when an individual seeks to make a confidential disclosure under this
35 subsection, the Legislative Equity Officer or offsite process counselor shall:

36 (A) Explain the availability or lack of availability of any privilege that would permit the indi-
37 vidual seeking to make a confidential disclosure under this subsection to refuse to disclose, and to
38 prevent any other person from disclosing, confidential communications and records; and

39 (B) Ask whether the individual making a confidential disclosure under this subsection needs one
40 or more safety measures described in subsection (13) of this rule put in place.

41 (e) When an individual makes a confidential disclosure under this subsection, the Legislative
42 Equity Officer or offsite process counselor:

43 (A) Shall advise the individual making the disclosure of other options that are available to ad-
44 dress the conduct, including conduct reports under subsection (11) of this rule, conduct complaints
45 under subsection (12) of this rule, interim safety measures under subsection (13) of this rule, state

1 and federal administrative options with the Bureau of Labor and Industries and the Equal Employ-
2 ment Opportunity Commission of the United States, law enforcement or the civil judicial process;

3 (B) In the case of an individual making the disclosure being affiliated with an institution that
4 is subject to Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 to 1688, as amended,
5 shall advise the individual of the Title IX reporting process and provide applicable institution con-
6 tact information and information on the resources available at the institution;

7 (C) Shall explain the availability of employee assistance program counselors and other available
8 service providers and may refer the individual making a disclosure under this subsection to a
9 counselor or other provider, as appropriate; and

10 (D) Shall explain the actions that the officer or counselor may take following a disclosure made
11 under this subsection and due process and other rights that limit the scope of actions that may be
12 taken following a disclosure under this subsection, including possible limitations on the availability
13 of safety measures.

14 (f) If requested by an individual making a disclosure under this subsection, the Legislative Eq-
15 uity Officer or offsite process counselor shall refrain from making a confidential record of the
16 identity of the individual making the disclosure. The officer or counselor shall explain the avail-
17 ability of this option to any individual making a disclosure under this subsection.

18 (g)(A) The Legislative Equity Officer, on or before July 1, 2020, shall establish a means for in-
19 dividuals to make disclosures under this subsection that are entirely anonymous, so that the Legis-
20 lative Equity Officer or offsite process counselor cannot determine the identity of the individual
21 making a disclosure using means described in this paragraph.

22 (B) In the event of an anonymous disclosure made under this paragraph, paragraphs (d), (e) and
23 (f) of this subsection do not apply.

24 (h) If the Legislative Equity Officer or offsite process counselor receives information concerning
25 conduct that is inconsistent with a respectful workplace policy adopted by the Joint Committee on
26 Conduct but that does not rise to the level of creating a hostile work environment or violating
27 public accommodation law, the officer shall refer the reporter to the Human Resources Director.

28 (11) Conduct reports.

29 (a) Any individual who experiences behavior prohibited by this rule or observes behavior that
30 is inconsistent with this rule may make a nonconfidential report of the behavior under this sub-
31 section within five years of the date the behavior occurred. A report made under this subsection
32 shall be referred to as a conduct report.

33 (b) An appointing authority, including any member of the Legislative Assembly, shall promptly
34 make a conduct report under this subsection if they have received information that they reasonably
35 believe describes behavior that may be prohibited by this rule, have observed behavior that they
36 reasonably believe may be prohibited by this rule or in any way have knowledge of behavior that
37 they reasonably believe may be prohibited by this rule.

38 (c) A nonpartisan staff supervisor shall promptly make a conduct report under this subsection
39 if they have received information that they reasonably believe describes behavior that may be pro-
40 hibited by this rule, have observed behavior that they reasonably believe may be prohibited by this
41 rule or in any way have knowledge of behavior that they reasonably believe may be prohibited by
42 this rule.

43 (d) A Legislative Branch contractor, or an employee of a contractor, that is contractually obli-
44 gated to do so, shall promptly make a conduct report under this subsection if they have information
45 that they received a report of conduct prohibited by this rule, have observed behavior prohibited

1 by this rule or in any way have knowledge of behavior prohibited by this rule.

2 (e) Notwithstanding paragraphs (a) to (d) of this subsection:

3 (A) If a reporter is required to make a conduct report under this subsection but is also the
4 person experiencing behavior prohibited by this rule, the person may make a confidential disclosure
5 under subsection (10) of this rule that satisfies the requirements of reporting under this subsection.

6 (B) An individual is not required to make a conduct report under this subsection if the individ-
7 ual would be the subject of the report.

8 (f) A conduct report made under this subsection shall be made to:

9 (A) An independent investigator;

10 (B) The Legislative Equity Officer;

11 (C) The Human Resources Director; or

12 (D) Staff of Employee Services who have been designated by the Human Resources Director to
13 receive conduct reports made under this subsection.

14 (g) A reporter may make a conduct report in any form and using any means. However, the Joint
15 Committee on Conduct established under ORS 173.900 shall establish uniform recordkeeping pro-
16 cesses applicable to the Legislative Equity Officer and Employee Services to ensure that conduct
17 reports made under this subsection are adequately documented.

18 (h) A conduct report made under this subsection that is received by an independent investigator,
19 Employee Services or the Human Resources Director shall be forwarded to the Legislative Equity
20 Officer.

21 (i)(A) The Legislative Equity Officer shall review all conduct reports received under this sub-
22 section to determine whether the reported conduct, when taken on its face, could be prohibited by
23 this rule. The officer may, in the officer's discretion, ask an independent investigator to determine
24 whether the reported conduct, when taken on its face, could be prohibited by this rule. If the officer
25 or investigator determines that an investigation is warranted, the officer shall confer with each
26 impacted party, provide an explanation of the investigation process and inform the impacted party
27 that they may opt out of proceeding with an investigation.

28 (B) If the impacted party does not opt out of proceeding with the investigation, an investigation
29 as described in subsection (14) of this rule shall be undertaken.

30 (C) If the impacted party opts out of proceeding with an investigation, the Legislative Equity
31 Officer shall maintain confidential records of the report to be used for determining if there is a
32 pattern of conduct that violates this rule or applicable respectful workplace policies. The officer
33 shall provide the impacted party with information on available resources, including resources de-
34 scribed in subsection (10)(e)(B) and (C) of this rule.

35 (D) If the Legislative Equity Officer or investigator determines that the reported conduct, on its
36 face, is not conduct prohibited by this rule, the officer may:

37 (i) Engage in specific coaching of individuals to eliminate any uncertainty over appropriate
38 workplace behavior;

39 (ii) Confer with and make recommendations to the appropriate appointing authority or legisla-
40 tive leader to facilitate training or guidance being given to address reported circumstances; or

41 (iii) Take any other action that is warranted to achieve the policies established under these
42 rules.

43 (12) Conduct complaints.

44 (a) Any person who experiences behavior prohibited by this rule or observes behavior that is
45 inconsistent with this rule may make a complaint under this subsection within five years after the

1 date the behavior occurred. A complaint made under this subsection shall be referred to as a con-
2 duct complaint.

3 (b) A conduct complaint must:

4 (A) Be in writing;

5 (B) Identify the complainant and the person being accused of engaging in conduct prohibited by
6 this rule;

7 (C) Set forth the facts and circumstances that the complainant believes describe conduct that
8 is prohibited by this rule; and

9 (D) Be made in a declaration under penalty of perjury that is satisfied when the declarant signs
10 the complaint immediately under a sentence that states, "I hereby declare that the above statement
11 is true to the best of my knowledge and belief, and that I understand it is made for use as evidence
12 in proceedings under Legislative Branch Personnel Rule 27 and is subject to penalty for perjury."

13 (c) A conduct complaint shall be delivered to the Legislative Equity Officer or an independent
14 investigator. If the complaint is delivered to an independent investigator, the investigator shall de-
15 liver a copy of the complaint to the officer.

16 (d) The Legislative Equity Officer shall promptly examine the conduct complaint and determine
17 if the complaint meets the requirements of paragraph (b) of this subsection. If the complaint does
18 not meet the requirements of paragraph (b) of this subsection, the investigator shall request the
19 complainant to supplement the complaint. A complaint that does not meet the requirements of par-
20 agraph (b) of this subsection may not be the subject of an investigation under subsection (14) of this
21 rule.

22 (e) The Legislative Equity Officer shall review all conduct complaints received under this sub-
23 section to determine whether the reported conduct, when taken on its face, could be prohibited by
24 this rule. If the officer determines that an investigation is warranted, an investigation as described
25 in subsection (14) of this rule shall be undertaken. The officer may, in the officer's discretion, ask
26 the independent investigator to determine whether the reported conduct, when taken on its face,
27 could be prohibited by this rule. The officer shall provide the complainant with information on
28 available resources, including resources described in subsection (10)(e)(B) and (C) of this rule. If the
29 officer or investigator determines that the reported conduct, on its face, is not conduct prohibited
30 by this rule, the officer may:

31 (A) Engage in specific coaching of individuals to eliminate any uncertainty over appropriate
32 workplace behavior;

33 (B) Confer with and make recommendations to the appropriate appointing authority or legisla-
34 tive leader to facilitate training or guidance being given to address reported circumstances; or

35 (C) Take any other action that is warranted to achieve the policies established under these
36 rules.

37 (f) After a determination under paragraphs (d) and (e) of this subsection that an investigation
38 is warranted, the independent investigator shall promptly:

39 (A) Deliver a copy of the conduct complaint to the person accused of engaging in behavior
40 prohibited by this rule, who shall thereafter be the respondent; and

41 (B) If the respondent:

42 (i) Is a member of the Legislative Assembly, deliver a copy of the complaint to the caucus leader
43 of the caucus in which the member serves;

44 (ii) Is a caucus leader, deliver a copy of the complaint to the presiding officer of the chamber
45 in which the caucus leader serves and to a member who is in an elected leadership position of the

1 caucus in which the caucus leader serves;

2 (iii) Is a Legislative Branch employee in either a partisan or nonpartisan staff position, deliver
3 a copy of the complaint to the appointing authority for the respondent;

4 (iv) Is an agency head, deliver a copy of the complaint to the presiding officers;

5 (v) Is a parliamentarian, deliver a copy of the complaint to the presiding officer of the chamber
6 in which the parliamentarian serves; and

7 (vi) Is a registered lobbyist, executive or judicial branch employee, employee of a contractor or
8 a member of the public, deliver a copy of the complaint to the Legislative Administrator.

9 (g) The Legislative Equity Officer shall provide the complainant with information on available
10 resources, including resources described in subsection (10)(e)(B) and (C) of this rule.

11 (h) Upon delivery of the conduct complaint as prescribed in paragraph (f) of this subsection, the
12 independent investigator shall promptly begin the investigation described in subsection (14) of this
13 rule and recommend any necessary interim safety measures as described in subsection (13) of this
14 rule.

15 (13) Interim safety measures.

16 (a) Upon receipt of a conduct report made under subsection (11) of this rule or a conduct com-
17 plaint made under subsection (12) of this rule, or at any time during the course of an investigation,
18 the independent investigator may determine that an interim safety measure needs to be implemented
19 to ensure the safety of the complainant or any other individual who has experienced behavior that
20 is prohibited by this rule or who may reasonably be foreseen as at risk of being subjected to be-
21 havior that is prohibited by this rule. The Legislative Equity Officer or an offsite process counselor
22 may also recommend an interim safety measure if interim safety measures are sought by an indi-
23 vidual making a confidential disclosure under subsection (10) of this rule. The investigator, officer
24 or counselor may recommend any interim safety measure that they determine is appropriate to the
25 situation, including but not limited to:

26 (A) Temporary reassignment of the respondent;

27 (B) Alternative work location for the respondent, including being duty-stationed at home;

28 (C) Establishing a no contact order;

29 (D) Placing the respondent on paid or unpaid leave and prohibiting the respondent from being
30 present in the workplace or the State Capitol;

31 (E) Directing the respondent to be absent from the State Capitol until the investigation is com-
32 plete; or

33 (F) In severe situations, involving law enforcement.

34 (b) Any interim safety measure that is recommended or that is implemented may not prejudice
35 a complainant or put a complainant in a worse position than the complainant was in before the
36 complaint was made.

37 (c)(A) Any interim safety measure that is imposed may not unlawfully impair any lawful rights
38 an accused person may exercise.

39 (B) Any interim safety measure that is imposed on a member of the Legislative Assembly must
40 be narrowly tailored to minimize limitations on the member's ability to perform core legislative
41 functions and to address immediate safety concerns, and an interim safety measure may not be im-
42 posed until after the member is given notice of the proposed interim safety measure and an oppor-
43 tunity to be heard by the applicable chamber committee on conduct.

44 (d) If the respondent is a member of the Legislative Assembly:

45 (A) The committee on conduct of the chamber in which the respondent serves is authorized to

1 impose an interim safety measure on the respondent that lasts no longer than until the complaint
2 is resolved;

3 (B) The independent investigator shall report the investigator's interim safety recommendation
4 and the reasons for the recommendation to the respondent, to the committee and to the presiding
5 officer of the chamber; and

6 (C) The committee shall promptly deliberate on the recommendation and shall adopt such in-
7 terim safety measures that the committee determines are appropriate. For purposes of conducting
8 a hearing to deliberate on interim safety measures under this paragraph, the committee hearing need
9 only comply with one-hour notice requirements.

10 (e) If the respondent is not a member of the Legislative Assembly, the independent investigator
11 shall make the investigator's interim safety recommendation:

12 (A) In the case of a respondent who is a Legislative Branch employee in either a partisan or
13 nonpartisan staff position, to the employee's appointing authority.

14 (B) In the case of a respondent who is a State of Oregon employee but not a Legislative Branch
15 employee, to the employee's agency director and the Legislative Administrator.

16 (C) In the case of a respondent who is a lobbyist, employee of a contractor or member of the
17 public, to the Legislative Administrator.

18 (f) The person who receives the independent investigator's interim safety recommendation made
19 under paragraph (e) of this subsection shall act promptly on the recommendation.

20 (g) The Legislative Equity Officer or an offsite process counselor that has received a confiden-
21 tial disclosure under subsection (10) of this rule may recommend interim safety measures under this
22 subsection if requested by the individual making a disclosure under subsection (10) of this rule, ex-
23 cept that the interim safety measure may not:

24 (A) Identify the individual making the confidential disclosure without the consent of the indi-
25 vidual; or

26 (B) Penalize or place the person who is the subject of the disclosure in a worse position than
27 before the disclosure was made.

28 (14) Investigations.

29 (a) As soon as is practicable after July 23, 2019, the Joint Committee on Conduct shall:

30 (A) Adopt standards and criteria for the selection of an independent investigator unaffiliated
31 with the Legislative Branch, and the Legislative Equity Officer shall maintain a list of potential
32 independent investigators who meet the standards and criteria established by the committee; and

33 (B) Direct the Legislative Equity Officer to enter into one or more contracts with individuals
34 who meet the standards and criteria established by the committee, to serve as an independent in-
35 vestigator under this rule.

36 (b) An investigation that is to be conducted under this subsection shall be conducted promptly
37 and shall be completed as soon as is practicable. The investigation must be completed within 84 days
38 from the date the complaint is made, except that the Legislative Equity Officer may extend the time
39 by which the investigation must be completed if the independent investigator provides advance no-
40 tice to the complainant and the respondent of the extension and an explanation justifying the ex-
41 tension.

42 (c) The independent investigator shall keep the complainant and the respondent apprised of the
43 investigation timeline and the status of the investigation at the outset of an investigation, on a
44 regular basis thereafter and upon request of the complainant or respondent.

45 (d)(A) The independent investigator shall use best practices in conducting the investigation and

1 shall make findings of fact relevant to the allegations. The investigator shall prepare draft written
2 findings of fact at least eight days before the investigation must be concluded under paragraph (b)
3 of this subsection and shall provide the draft written findings to the complainant and the respondent.

4 (B) If the respondent is someone other than a member of the Legislative Assembly, the draft
5 written findings shall also contain a proposed finding of whether one or more violations of this rule
6 occurred.

7 (C) In all investigations, the independent investigator shall consider whether the conduct that
8 is the subject of the investigation constitutes discrimination by denigrating or showing hostility to-
9 ward a protected class or toward an individual because of the individual's status as a member of a
10 protected class. The investigator shall report the investigator's considerations under this subpara-
11 graph in the investigator's draft written findings. If the investigator determines that the conduct
12 constitutes discrimination by denigrating or showing hostility toward an individual because of the
13 individual's status as a member of a protected class, the investigator may not specify in the
14 investigator's draft written findings the protected class to which the individual belongs.

15 (D) The complainant and the respondent may give responses to the draft written findings to the
16 investigator within seven days of receiving the draft.

17 (E) The independent investigator shall consider responses supplied under subparagraph (D) of
18 this paragraph and shall prepare a final report that sets forth the investigator's findings of fact and
19 considerations regarding the presence or absence of discrimination described in subparagraph (C)
20 of this paragraph. If the respondent is someone other than a member of the Legislative Assembly,
21 the final report should also include a determination by the investigator of whether the facts con-
22 stitute a violation of this rule.

23 (e)(A) If a member of the Legislative Assembly is the respondent, the independent investigator
24 shall deliver the final report to the complainant, the respondent, the Legislative Equity Officer and
25 the committee on conduct for the chamber in which the respondent serves on or before the date
26 established under paragraph (b) of this subsection for the completion of the investigation.

27 (B) The complainant and the respondent may each submit to the appropriate committee on
28 conduct a written challenge to the factual findings set forth in the final report within seven days
29 of receipt of the report. A challenge must identify the factual findings that are the subject of the
30 challenge and articulate the reason those findings are in error.

31 (C) The committee on conduct shall conduct a hearing on the allegations made in the complaint
32 and the investigator's final report within 21 days of receiving the report from the investigator. The
33 committee shall permit the complainant and the respondent to appear, present documents and
34 physical evidence and suggest witnesses. The committee may determine to hear witnesses, but only
35 committee members may question witnesses.

36 (D) At the hearing or a subsequent hearing, the committee on conduct shall deliberate and:

37 (i) Make a final determination of facts;

38 (ii) Make a final determination of whether the facts constitute a violation of this rule; and

39 (iii) If the determination is that a violation of this rule occurred, prescribe or recommend rem-
40 edies as described in subsection (15) of this rule.

41 (f) If a member of the Legislative Assembly is the respondent and irrevocably resigns the
42 member's office at any time after the conduct complaint is made, the investigation described in this
43 subsection and the committee on conduct hearing and final committee determinations described in
44 paragraph (e) of this subsection shall nevertheless take place.

45 (g)(A) If someone other than a member of the Legislative Assembly is the respondent, the inde-

1 pendent investigator shall deliver the final report, including proposed findings of violations, to the
2 complainant, the respondent and:

3 (i) In the case of a respondent who is a Legislative Branch employee in a nonpartisan staff po-
4 sition, to the respondent's appointing authority.

5 (ii) In the case of a respondent who is a Legislative Branch employee in a partisan staff position,
6 to the respondent's appointing authority and, if the investigator determined that a violation of the
7 rule had occurred, to the committee on conduct of the chamber with which the employee is affil-
8 iated.

9 (iii) In the case of a respondent who is a State of Oregon employee but not a Legislative Branch
10 employee, to the Legislative Administrator and the respondent's agency director.

11 (iv) In the case of a respondent who is a lobbyist, employee of a contractor or member of the
12 public, to the Legislative Administrator.

13 (v) In all instances, to the Legislative Equity Officer.

14 (B) A nonpartisan staff appointing authority who receives the independent investigator's final
15 report under subparagraph (A)(i) of this paragraph, or the Legislative Administrator upon receiving
16 the independent investigator's final report under subparagraph (A)(iii) or (iv) of this paragraph, shall
17 determine remedial measures described in subsection (15) of this rule within 14 days of receiving the
18 investigator's final report.

19 (C) The appropriate committee on conduct that receives the independent investigator's final re-
20 port under subparagraph (A)(ii) of this paragraph shall, if the investigator determined that a vio-
21 lation of the rule had occurred, make a recommendation on remedial measures described in
22 subsection (15) of this rule to the supervising member of the Legislative Assembly within 14 days
23 of receiving the investigator's final report. The supervising member of the Legislative Assembly
24 shall consider the recommendations and make a final determination on the remedial measures within
25 21 days of receiving the investigator's final report.

26 (15) Remedial measures.

27 (a) In a case where the respondent is a member of the Legislative Assembly and the appropriate
28 committee on conduct has made a determination under subsection (14)(e) of this rule that a violation
29 of this rule has occurred, the committee shall impose any remedy that is sufficient to reprimand the
30 member and deter future conduct that violates the rule, including but not limited to a reprimand,
31 monetary fine or other remedy that the committee determines is appropriate under the circum-
32 stances:

33 (A) Except that, if the committee recommendation is to expel the member, the committee shall
34 report that recommendation to the full chamber, which shall act on that recommendation at its
35 earliest opportunity;

36 (B) Except that, if the committee recommendation is to remove the member from one or more
37 committees to which the member is assigned, unless subparagraph (C) of this paragraph applies, the
38 committee shall report that recommendation to the presiding officer of that chamber; and

39 (C) Including the removal of the member from the committee on conduct. If a member is removed
40 from the committee on conduct under this subsection, the member also is removed from the Joint
41 Committee on Conduct.

42 (b)(A) In a case where the respondent is a Legislative Branch employee in a nonpartisan staff
43 position, the appointing authority, in consultation with the Human Resources Director, shall deter-
44 mine an appropriate remedy that is consistent with the independent investigator's determination
45 that the respondent violated the requirements of this rule.

1 (B) The respondent may appeal the investigator's final report or any remedial measure imposed
2 under this paragraph after the report has been delivered to the appointing authority but no later
3 than seven days after the imposition of remedial measures under this subsection, except that any
4 appeal must be based only on:

5 (i) Newly discovered evidence that was not taken into account by the investigator;

6 (ii) A claim of process error that is being asserted by the appellant; or

7 (iii) A claim that the investigator or the person or committee that imposed a remedy acted with
8 bias.

9 (C) The appeal may be made to the Joint Committee on Conduct.

10 (c)(A) In a case where the respondent is a Legislative Branch employee in a partisan staff po-
11 sition, the committee on conduct of the chamber with which the employee is affiliated shall, if the
12 investigator determined that a violation of the rule had occurred, make a recommendation on an
13 appropriate remedy consistent with the independent investigator's determination that the respondent
14 violated the requirements of this rule. The committee's recommendation shall be made to the mem-
15 ber of the Legislative Assembly for whom the respondent works.

16 (B) The member shall determine the appropriate remedy within the time prescribed in subsection
17 (14)(g)(C) of this rule and shall notify the Legislative Equity Officer upon making the determination.

18 (C) If the Legislative Equity Officer determines that no remedial measures were imposed under
19 subparagraph (B) of this paragraph or that the remedial measures imposed were substantially dif-
20 ferent from the remedial measures recommended by the committee, the officer shall notify the com-
21 mittee of the disparity. The committee may hold a hearing and may impose a remedy.

22 (D) The respondent may appeal the investigator's final report or the remedial measure imposed
23 under this paragraph to the committee on conduct with which the respondent is associated within
24 seven days after the remedial measure is imposed, except that any appeal must be based only on a
25 claim described in paragraph (b)(B) of this subsection.

26 (d)(A) In a case where the respondent is a lobbyist, employee of a contractor or other person
27 who is present in the State Capitol for professional or work reasons, or is a member of the public,
28 and the independent investigator's final report determines that a violation of this rule has occurred,
29 the Legislative Administrator shall determine an appropriate remedy that is consistent with the
30 investigator's determination. The respondent may appeal the investigator's final report or the rem-
31 edy determined by the Legislative Administrator to the co-chairs of the Legislative Administration
32 Committee within seven days of the Legislative Administrator's determination, except that any ap-
33 peal must be based only on a claim described in paragraph (b)(B) of this subsection.

34 (B) If the respondent is a lobbyist, employee of a contractor or other person who is present in
35 the State Capitol for professional or work reasons, the Legislative Administrator shall provide no-
36 tice of the proposed remedy under this paragraph to the respondent and the respondent's employer
37 within 14 days of receiving the final report from the investigator. If the respondent is a lobbyist who
38 is a member of an association of professional lobbyists, the Legislative Administrator shall also
39 provide notice of the proposed remedy to the association.

40 (C) The Legislative Administrator may modify the proposed remedy at any time until 28 days
41 after receipt of the investigator's final report, but thereafter the proposed remedy is final.

42 (e) Each officer or entity charged with imposing a remedial measure under this subsection shall
43 consider and weigh the presence or absence of discrimination as described in subsection (14)(d)(C)
44 of this rule in the conduct found to be a violation of this rule. Because the Legislative Branch is
45 committed to promoting a safe, respectful and inclusive workplace and environment in the State

1 Capitol, a finding that discrimination was present in the conduct found to be a violation of this rule
2 justifies enhancing the severity of the remedy to be imposed.

3 (f) In addition to the follow-up described in subsection (9)(b) of this rule, the Legislative Equity
4 Officer shall engage in final process counseling with an impacted party as soon as is practicable
5 after:

6 (A) A determination is made under subsection (14) that no violation of this rule occurred; or

7 (B) A final determination is made under this subsection concerning the imposition of remedies.

8 (16) Confidentiality and transparency.

9 (a) The independent investigator undertaking an investigation under subsection (14) of this rule
10 and the Legislative Equity Officer shall provide as much privacy as possible during the course of
11 an investigation.

12 (b) The independent investigator and the Legislative Equity Officer shall maintain all records
13 and information about an investigation confidentially, except that:

14 (A) The investigator may disclose the fact of the investigation and any relevant details of the
15 investigation to the appointing authority of the complainant and the respondent and the Joint
16 Committee on Conduct, if the investigator determines there is a legitimate need to disclose the in-
17 formation; and

18 (B) In the case of a respondent who is a member of the Legislative Assembly, the investigator
19 may disclose the fact of the investigation and any relevant details of the investigation to the person
20 to whom the conduct complaint was delivered under subsection (12)(f)(B) of this rule.

21 (c) A conduct complaint made under subsection (12) of this rule is disclosable upon being made
22 under subsection (12) of this rule, but all records relating to an ongoing investigation under sub-
23 section (14) of this rule shall be maintained in confidence.

24 (d) Records and information of the independent investigator and the Legislative Equity Officer
25 shall be exempt from disclosure as prescribed under applicable law, except that, also as prescribed
26 under applicable law:

27 (A) A conduct complaint made under subsection (12) of this rule is disclosable when requested;

28 (B) Records relating to a member of the Legislative Assembly following a conduct complaint
29 being made concerning the member are subject to disclosure after the fact-finding investigation has
30 concluded, even if a legislative committee has not yet met or deliberated on the investigation's
31 findings; and

32 (C) Records relating to an investigation of allegations of conduct prohibited by legislative
33 branch personnel rules and not described in subparagraph (A) or (B) of this paragraph are subject
34 to disclosure upon a determination being made that the person who was the subject of the investi-
35 gation is subject to remedial measures or discipline.

36 (17) Establishment of committees on conduct.

37 (a)(A) The Senate Committee on Conduct is established, consisting of four Senators and six al-
38 ternates. Two Senators and three alternates must be from the majority party and two Senators and
39 three alternates must be from the minority party. Each Senator must be approved by majority vote
40 of the Senate to serve on the committee or to serve as an alternate, following being nominated by
41 any Senator. The majority and minority caucus leaders shall each nominate at least one Senator to
42 serve as a committee member from their caucus.

43 (B) The Senate Committee on Conduct shall perform those functions assigned by this rule to
44 carry out the purposes of Article IV, section 15, of the Oregon Constitution, for the Senate.

45 (C) The Senate shall appoint members of the Senate Committee on Conduct within 15 days after

1 the date of the convening of an organizational session of the odd-numbered year regular session of
2 the Legislative Assembly, as soon as practicable after a vacancy occurs or as soon as practicable
3 after this rule takes effect.

4 (b)(A) The House Committee on Conduct is established, consisting of four Representatives and
5 six alternates. Two Representatives and three alternates must be from the majority party and two
6 Representatives and three alternates must be from the minority party. Each Representative must be
7 appointed by majority vote of the House of Representatives to serve on the committee or to serve
8 as an alternate, following being nominated by any Representative. The majority and minority caucus
9 leaders shall each nominate at least one Representative to serve as a committee member from their
10 caucus.

11 (B) The House Committee on Conduct shall perform those functions assigned by this rule to
12 carry out the purposes of Article IV, section 15, of the Oregon Constitution, for the House of Rep-
13 resentatives.

14 (C) The House of Representatives shall appoint members of the House Committee on Conduct
15 within 15 days after the date of the convening of an organizational session of the odd-numbered year
16 regular session of the Legislative Assembly, as soon as practicable after a vacancy occurs or as soon
17 as practicable after this rule takes effect.

18 (c) The members of the Senate Committee on Conduct and the members of the House Committee
19 on Conduct shall together comprise the Joint Committee on Conduct. The Joint Committee on Con-
20 duct shall perform the duties assigned to the joint committee under chapter 604, Oregon Laws 2019,
21 or this rule.

22 (d)(A) When a member of a committee on conduct is named as a respondent under this rule, the
23 member shall be recused from service as a member of the committee or as a member of the joint
24 committee until the matter is resolved.

25 (B) When a member of a committee on conduct is a complainant or is identified as an impacted
26 party in a final report in a matter that is pending before a committee on conduct, the member shall
27 be recused from participating in the matter as a committee member.

28 (e) If an alternate is required to serve as a member of a committee on conduct, the specific al-
29 ternate shall be selected so as to preserve the balance of committee membership between majority
30 party and minority party members and thereafter in the order in which the alternate was appointed
31 to be an alternate.

32 **(f) The Senate Committee on Conduct and the House Committee on Conduct may not**
33 **meet using virtual or electronic means. All proceedings of the Senate Committee on Conduct**
34 **and of the House Committee on Conduct shall be conducted in person at the Capitol and shall**
35 **be conducted on weekdays between 8:00 a.m. and 5:00 p.m.**

36 (18) Respectful workplace policies.

37 (a) The Joint Committee on Conduct shall develop and maintain a respectful workplace policy
38 to address conduct that is inconsistent with the policy direction established for the Legislative
39 Branch as set forth in subsection (1) of this rule but that does not rise to the level of creating a
40 hostile work environment or violating public accommodation law.

41 (b) In addition to establishing standards of conduct and giving examples of conduct that violates
42 those standards, the policy shall establish procedures for determining and imposing remedial meas-
43 ures, including but not limited to training, coaching and counselling.

44 (c) For Legislative Branch employees, the policy shall also establish procedures for determining
45 and imposing proportionate discipline when appropriate.

1 (d) For members of the Legislative Assembly, the policy shall also establish procedures for
2 making recommendations to the appropriate committee on conduct established in subsection (17) of
3 this rule for proportionate discipline when appropriate.

4 (e) The Human Resources Director shall administer the respectful workplace policy. The direc-
5 tor may delegate specific tasks under the policy to other Employee Services employees.

6 (19) Recommendation.

7 The Joint Committee on Conduct shall on or before January 1, 2021, make a recommendation
8 to the President of the Senate and the Speaker of the House of Representatives on whether inves-
9 tigation functions described in this rule shall continue to be performed by one or more independent
10 investigators or shall be performed by Legislative Branch personnel affiliated with the Legislative
11 Equity Office.

12 (20) Application.

13 The five-year limitation in subsections (11)(a) and (12)(a) of this rule applies to conduct occur-
14 ring before, on or after the effective date of this rule, but does not operate to revive a claim barred
15 by a previous iteration of this rule.

16
17 **Legislative Branch Personnel Rule 27-B:**

18 (1) **The amendments to Legislative Branch Personnel Rule 27 by this concurrent resolu-**
19 **tion apply to Senate and House Committee on Conduct meetings that occur on or after the**
20 **date this concurrent resolution is adopted.**

21 (2) **This rule is repealed on December 31, 2025.**

22