

House Concurrent Resolution 20

Sponsored by Representative RESCHKE

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The measure makes changes to LBPR 27 to limit the role of secrecy in investigations made under the rule. The measure says that a person being investigated has a right to a lawyer, with the costs paid for by the LEO, a right to discover evidence and question witnesses and a right to appeal to a court. The measure makes changes to the standard of proof for facts. (Flesch Readability Score 60.6).

Modifies Legislative Branch Personnel Rule 27 to eliminate confidential reports or information being used for investigations performed under the rule by requiring disclosure at conclusion of investigation. Authorizes an investigation respondent to obtain independent counsel to be paid for by the Legislative Equity Officer. Provides that an investigation respondent has the right to discover evidence and depose witnesses. Requires that findings of fact must be established beyond a reasonable doubt. Provides that a respondent who is subject to remedial measures has the right to appeal the determination to a court for de novo judicial review. Provides that a person subject to the rule may not be accused of violating the rule for the same conduct that was previously not found to violate the rule.

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 June 24, 2021, is further amended, and Legislative Branch Personnel Rule 27-C 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

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 conduct themselves in a manner that is free of harassment and to discourage all harassment in the
 2 workplace and at professional meetings, seminars or at any event at which legislative business is
 3 conducted.

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

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

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

10 (g) This rule is designed to provide options to those who are experiencing or observing harass-
 11 ing behavior, discriminatory behavior, retaliation or other behavior prohibited by subsection (8) of
 12 this rule to seek information, report behaviors or file complaints to address and resolve concerns,
 13 while also enhancing options available to victims who seek to remain anonymous. This rule provides
 14 options that are in addition to and not in lieu of any other remedy afforded by state or federal law,
 15 including remedies to address discrimination that is prohibited by ORS 659A.030 (including sexual
 16 assault) and ORS 659A.082 and 659A.112, all of which have a statute of limitations of five years.

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

20 (2) Application.

21 (a) Any individual who experiences behavior prohibited by this rule or observes behavior in-
 22 consistent with this rule may use the reporting options described in subsections (10) [to] **and** (12)
 23 of this rule.

24 (b) An appointing authority or a nonpartisan staff supervisor, including any member of the
 25 Legislative Assembly, shall report behavior prohibited by this rule by the means described in sub-
 26 section (11) of this rule. If the appointing authority or supervisor is making a [report] **disclosure**
 27 **or complaint** because an individual has disclosed to the appointing authority or supervisor that the
 28 individual may be experiencing conduct prohibited by this rule, the appointing authority or super-
 29 visor, as soon as practicable after receiving the disclosure, shall provide a copy of the materials
 30 described in Legislative Branch Personnel Rule 32 (4)(a)(B) to (D) to the individual making the dis-
 31 closure.

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

34 (A) Members of the Legislative Assembly;

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

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

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

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

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

41 (3) Definitions.

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

45 (b) "Appointing authority" means the person who has authority in the interest of the employer

1 to hire, transfer, suspend, lay off, promote, terminate or discipline an employee.

2 (c) “Caucus leader” means the Democratic or Republican leader of the Senate or the Democratic
3 or Republican leader of the House of Representatives.

4 (d) “Caucus office” means the office of the Democratic or Republican leader of the Senate or the
5 office of the Democratic or Republican leader of the House of Representatives.

6 (e) “Chamber” means the Senate or the House of Representatives.

7 (f) “Complainant” means a person who has filed a conduct complaint under subsection (12) of
8 this rule.

9 (g) “Employee” means an employee who is performing services on behalf of the Legislative
10 Branch. “Employee” includes any intern, extern or volunteer who is affiliated with a Legislative
11 Branch office.

12 (h) “Employee Services” means the division of Legislative Administration charged with employ-
13 ment and human resources administration for the Legislative Branch.

14 (i) “Human Resources Director” means the manager of Employee Services.

15 (j) “Impacted party” means a person who is described in a conduct *[report]* **complaint** made
16 under subsection [(11)] (12) of this rule as one who has experienced behavior prohibited by this rule.

17 (k) “Independent investigator” means an investigator under contract pursuant to ORS 173.912,
18 who is available to perform or is performing an investigation under this rule.

19 (L) “Investigator” means either an independent investigator or an investigator employed by the
20 Legislative Equity Officer under ORS 173.909 (2) for the purpose of conducting investigations.

21 (m) “Legislative Branch” means members and employees of the Legislative Assembly, the par-
22 liamentary offices, Legislative Administration, the Legislative Counsel Office, the Legislative Equity
23 Office, the Legislative Fiscal Office, the Legislative Policy and Research Office, the Legislative Re-
24 venue Office and the Commission on Indian Services.

25 (n) “Legislative Equity Officer” means the Legislative Equity Officer appointed under ORS
26 173.900 or an acting equity officer serving under ORS 173.906.

27 (o) “Member of the Legislative Assembly” or “member” means a Senator or a Representative.

28 (p) “Nondisclosure agreement” means an agreement by which one or more parties subject to this
29 rule agree not to discuss or disclose information regarding a complaint of harassment, discrimination
30 or sexual assault.

31 (q) “Nondisparagement agreement” means an agreement by which one or more parties subject
32 to this rule agree not to discredit or make negative or disparaging written or oral statements about
33 any other party subject to this rule, the Legislative Assembly or any office of the Legislative
34 Branch.

35 (r) “Nonpartisan staff” means an employee of the parliamentary offices, Legislative Adminis-
36 tration, the Legislative Counsel Office, the Legislative Equity Office, the Legislative Fiscal Office,
37 the Legislative Policy and Research Office, the Legislative Revenue Office or the Commission on
38 Indian Services.

39 (s) “Offsite process counselor” means a person unaffiliated with the Legislative Branch who has
40 entered into a contract with the Legislative Equity Officer under ORS 173.930 to provide services
41 described in subsection (10) of this rule.

42 (t) “Parliamentarian” means the Secretary of the Senate or the Chief Clerk of the House of
43 Representatives.

44 (u) “Parliamentary office” means the Office of the Secretary of the Senate or the Office of the
45 Chief Clerk of the House of Representatives.

1 (v) "Partisan staff" means an employee working directly for a member of the Legislative As-
2 sembly, an employee of a caucus office or an employee of the office of the Senate President or the
3 office of the Speaker of the House of Representatives.

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

6 (A) Sex;

7 (B) Race;

8 (C) Ethnicity;

9 (D) National origin;

10 (E) Age;

11 (F) Religion;

12 (G) Marital status;

13 (H) Sexual orientation;

14 (I) Gender identity or expression;

15 (J) Engaging in whistleblowing activity;

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

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

21 (M) Injured worker status;

22 (N) Disability; or

23 (O) Veteran status.

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

28 (y) "Sexual assault" means unwanted conduct of a sexual nature that is inflicted upon a person
29 or compelled through the use of physical force, manipulation, threat or intimidation.

30 (z) "Supervisor" means an employee of the Legislative Branch who manages or directs the work
31 of another employee of the Legislative Branch.

32 (4) Harassment and hostile work environment.

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

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

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

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

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

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

1 (c) Conduct that is inconsistent with a safe, respectful and inclusive workplace but that does
2 not rise to the level of creating a hostile work environment under this rule may be addressed under
3 the Legislative Branch respectful workplace policy referenced in subsection (18) of this rule.

4 (5) Sexual harassment.

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

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

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

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

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

24 (A) Unwanted sexual advances, flirtations or propositions.

25 (B) Demands for sexual favors in exchange for favorable treatment or continued employment.

26 (C) Sexual jokes.

27 (D) Verbal abuse of a sexual nature.

28 (E) Verbal commentary about the body, sexual prowess or sexual deficiency of an individual.

29 (F) Leering, whistling, touching or physical assault.

30 (G) Using sexually suggestive, insulting or obscene comments or gestures.

31 (H) Displaying sexually suggestive objects or pictures.

32 (I) Sending or forwarding electronic mail or other communications of an offensive or graphic
33 sexual nature.

34 (J) Discriminatory treatment based on sex.

35 (c) Sexual harassment includes any conduct described in subsection (4) of this rule that is based
36 on sex.

37 (d) Sexual harassment includes any conduct that constitutes sexual assault.

38 (6) Retaliation.

39 (a) A person engages in retaliation if the person treats another individual less favorably because
40 the individual made a good-faith complaint about conduct prohibited by this rule or participated in
41 an investigation about conduct that is prohibited by this rule.

42 (b) A person engages in retaliation if the person treats another individual less favorably because
43 that individual engaged in a process described in this rule or implemented one or more provisions
44 of this rule.

45 (c) A person engages in retaliation if the person treats another individual less favorably because

1 the individual made a good-faith complaint or took other action to address conduct prohibited in any
 2 respectful workplace policy adopted by the Joint Committee on Conduct under ORS 173.900, or this
 3 rule.

4 (7) Examples.

5 (a) The Legislative Equity Officer shall develop and propose to the Joint Committee on Conduct
 6 examples of what constitutes harassment, a hostile work environment, sexual harassment and retal-
 7 iation under this rule. The committee shall approve, modify or reject proposed examples presented
 8 to the committee.

9 (b) The Legislative Equity Officer shall maintain and publish examples of what constitutes
 10 harassment, a hostile work environment, sexual harassment and retaliation that have been approved
 11 by the committee under this subsection.

12 (8) Prohibitions.

13 The Legislative Branch prohibits conduct that:

14 (a) Constitutes harassment and creates a hostile work environment;

15 (b) Constitutes sexual harassment and creates a hostile work environment;

16 (c) Constitutes an unlawful practice that aids or abets discrimination in a place of public ac-
 17 commodation under the laws of the state; or

18 (d) Is retaliation.

19 (9) Reporting options, follow-up and documentation.

20 (a) In order to encourage participation and effectiveness, this rule establishes [*three*] **two** options
 21 for reporting behavior prohibited by this rule:

22 (A) A confidential disclosure process described in subsection (10) of this rule; **and**

23 [*B*] *A conduct reporting process described in subsection (11) of this rule; and*

24 [*C*] **(B)** A conduct complaint process described in subsection (12) of this rule.

25 (b) In each case of a disclosure[, *report*] or complaint made under this rule, the Legislative Eq-
 26 uity Officer, offsite process counselor or investigator, whichever is appropriate, shall:

27 (A) Provide a copy of this rule to each impacted party or complainant at the time a
 28 disclosure[, *report*] or complaint is made; and

29 (B) Follow up with the individual who experienced, or believes they experienced, conduct pro-
 30 hibited by this rule, at least once every three months for the year following the disclosure[, *report*]
 31 or complaint, to determine whether the alleged prohibited conduct has stopped and to determine
 32 whether the individual has experienced retaliation. The officer or investigator shall give the indi-
 33 vidual written notice at the outset of the follow-up period that follow-up described in this subpara-
 34 graph will occur unless the individual requests in writing that the officer or investigator not follow
 35 up.

36 (c) Every appointing authority, member of the Legislative Assembly, or employee of the Legis-
 37 lative Branch, is advised to document any incident involving conduct that is prohibited by ORS
 38 659A.030 (including sexual assault) or ORS 659A.082 or 659A.112 or this rule.

39 (10) Confidential disclosure process.

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

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

1 officer or counselor:

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

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

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

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

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

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

15 (B) The Legislative Equity Officer or offsite process counselor may not disclose information or
16 records to an investigator, except that nonpersonally identifiable information may be disclosed to
17 facilitate the taking of any action that is consistent with this rule and with the principles of the
18 Due Process Clause of the United States Constitution.

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

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

24 (B) Ask whether the individual making a confidential disclosure under this subsection needs one
25 or more safety measures described in subsection (13) of this rule put in place. **If a decision is made**
26 **to impose an interim safety measure under subsection (13) of this rule, the disclosure under**
27 **this subsection is not confidential.**

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

30 (A) Shall advise the individual making the disclosure of other options that are available to ad-
31 dress the conduct, including [conduct reports under subsection (11) of this rule,] conduct complaints
32 under subsection (12) of this rule, interim safety measures under subsection (13) of this rule, state
33 and federal administrative options with the Bureau of Labor and Industries and the Equal Employ-
34 ment Opportunity Commission of the United States, law enforcement or the civil judicial process;

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

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

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

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

5 (g)(A) The Legislative Equity Officer shall establish and maintain a means for individuals to
6 make disclosures under this subsection that are entirely anonymous, so that the Legislative Equity
7 Officer or offsite process counselor cannot determine the identity of the individual making a dis-
8 closure using means described in this paragraph.

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

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

16 **(i) The Legislative Equity Officer or offsite process counselor may undertake efforts at**
17 **training and coaching a person subject to this rule in response to a confidential disclosure**
18 **made under this subsection but, except as provided in subsection (13)(a) of this rule, may not**
19 **impose an interim safety measure under subsection (13) of this rule or undertake an inves-**
20 **tigation under subsection (14) of this rule. Remedial measures under subsection (15) of this**
21 **rule may not be made by any person in response to a confidential disclosure made under this**
22 **subsection.**

23 *[(11) Conduct reports.]*

24 *[(a) Any individual who experiences behavior prohibited by this rule or observes behavior that is*
25 *inconsistent with this rule may make a nonconfidential report of the behavior under this subsection*
26 *within five years of the date the behavior occurred. A report made under this subsection shall be re-*
27 *ferred to as a conduct report.]*

28 *[(b) An appointing authority, including any member of the Legislative Assembly, shall promptly*
29 *make a conduct report under this subsection if they have received information that they reasonably*
30 *believe describes behavior that may be prohibited by this rule, have observed behavior that they rea-*
31 *sonably believe may be prohibited by this rule or in any way have knowledge of behavior that they*
32 *reasonably believe may be prohibited by this rule.]*

33 *[(c) A nonpartisan staff supervisor shall promptly make a conduct report under this subsection if*
34 *they have received information that they reasonably believe describes behavior that may be prohibited*
35 *by this rule, have observed behavior that they reasonably believe may be prohibited by this rule or in*
36 *any way have knowledge of behavior that they reasonably believe may be prohibited by this rule.]*

37 *[(d) A Legislative Branch contractor, or an employee of a contractor, that is contractually obligated*
38 *to do so, shall promptly make a conduct report under this subsection if they have information that they*
39 *received a report of conduct prohibited by this rule, have observed behavior prohibited by this rule or*
40 *in any way have knowledge of behavior prohibited by this rule.]*

41 *[(e) Notwithstanding paragraphs (a) to (d) of this subsection:]*

42 *[(A) If a reporter is required to make a conduct report under this subsection but is also the person*
43 *experiencing behavior prohibited by this rule, the person may make a confidential disclosure under*
44 *subsection (10) of this rule that satisfies the requirements of reporting under this subsection.]*

45 *[(B) An individual is not required to make a conduct report under this subsection if the individual*

1 *would be the subject of the report.]*

2 *[(f) A conduct report made under this subsection shall be made to:]*

3 *[(A) An investigator;]*

4 *[(B) The Legislative Equity Officer;]*

5 *[(C) The Human Resources Director; or]*

6 *[(D) Staff of Employee Services who have been designated by the Human Resources Director to*
7 *receive conduct reports made under this subsection.]*

8 *[(g) A reporter may make a conduct report in any form and using any means. However, the Joint*
9 *Committee on Conduct established under ORS 173.900 shall establish uniform recordkeeping processes*
10 *applicable to the Legislative Equity Officer and Employee Services to ensure that conduct reports made*
11 *under this subsection are adequately documented.]*

12 *[(h) A conduct report made under this subsection that is received by an investigator, Employee*
13 *Services or the Human Resources Director shall be forwarded to the Legislative Equity Officer.]*

14 *[(i)(A) The Legislative Equity Officer shall review all conduct reports received under this sub-*
15 *section to determine whether the reported conduct, when taken on its face, could be prohibited by this*
16 *rule. The officer may, in the officer's discretion, ask an independent investigator to determine whether*
17 *the reported conduct, when taken on its face, could be prohibited by this rule. If the officer or inde-*
18 *pendent investigator determines that an investigation is warranted, the officer shall confer with each*
19 *impacted party, provide an explanation of the investigation process and inform the impacted party that*
20 *they may opt out of proceeding with an investigation.]*

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

23 *[(C) If the impacted party opts out of proceeding with an investigation, the Legislative Equity Of-*
24 *ficer shall maintain confidential records of the report to be used for determining if there is a pattern*
25 *of conduct that violates this rule or applicable respectful workplace policies. The officer shall provide*
26 *the impacted party with information on available resources, including resources described in subsection*
27 *(10)(e)(B) and (C) of this rule.]*

28 *[(D) If the Legislative Equity Officer or independent investigator determines that the reported con-*
29 *duct, on its face, is not conduct prohibited by this rule, the officer may:]*

30 *[(i) Engage in specific coaching of individuals to eliminate any uncertainty over appropriate*
31 *workplace behavior;]*

32 *[(ii) Confer with and make recommendations to the appropriate appointing authority or legislative*
33 *leader to facilitate training or guidance being given to address reported circumstances; or]*

34 *[(iii) Take any other action that is warranted to achieve the policies established under these*
35 *rules.]*

36 **(11) Obligations of appointing authorities, supervisors under this rule.**

37 **(a) The following persons are obligated to take action as described in paragraph (b) of**
38 **this subsection if they receive information they reasonably believe describes behavior that**
39 **may be prohibited by this rule, have observed behavior that they reasonably believe may be**
40 **prohibited by this rule or in any way have knowledge that they reasonably believe may be**
41 **prohibited by this rule:**

42 **(A) An appointing authority, including any member of the Legislative Assembly;**

43 **(B) A nonpartisan staff supervisor; or**

44 **(C) A Legislative Branch contractor, or an employee of a contractor, that is**
45 **contractually obligated to take action as described in paragraph (b) of this subsection.**

1 **(b) A person described in paragraph (a) of this subsection shall:**

2 **(A) Make a confidential disclosure under subsection (10) of this rule; or**

3 **(B) After conferring with the impacted party, make a conduct complaint under sub-**
4 **section (12) of this rule.**

5 **(c) Notwithstanding paragraph (a) or (b) of this subsection, an individual is not required**
6 **to make a conduct complaint under subsection (12) of this rule if the individual would be the**
7 **subject of the report.**

8 (12) Conduct complaints.

9 (a) Any person who experiences behavior prohibited by this rule or observes behavior that is
10 inconsistent with this rule may make a complaint under this subsection within five years after the
11 date the behavior occurred. A complaint made under this subsection shall be referred to as a con-
12 duct complaint.

13 (b) A conduct complaint must:

14 (A) Be in writing;

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

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

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

23 (c) A conduct complaint shall be delivered to the Legislative Equity Officer. If the complaint is
24 delivered to an investigator, the investigator shall deliver a copy of the complaint to the officer.

25 (d) The Legislative Equity Officer shall promptly examine the conduct complaint and determine
26 if the complaint meets the requirements of paragraph (b) of this subsection. If the complaint does
27 not meet the requirements of paragraph (b) of this subsection, the officer shall request the
28 complainant to supplement the complaint. A complaint that does not meet the requirements of par-
29 agraph (b) of this subsection may not be the subject of an investigation under subsection (14) of this
30 rule.

31 (e) The Legislative Equity Officer shall review all conduct complaints received under this sub-
32 section to determine whether the reported conduct, when taken on its face, could be prohibited by
33 this rule. If the officer determines that an investigation is warranted, an investigation as described
34 in subsection (14) of this rule shall be undertaken. The officer may, in the officer's discretion, ask
35 an independent investigator to determine whether the reported conduct, when taken on its face,
36 could be prohibited by this rule. The officer shall provide the complainant with information on
37 available resources, including resources described in subsection (10)(e)(B) and (C) of this rule. If the
38 officer or independent investigator determines that the reported conduct, on its face, is not conduct
39 prohibited by this rule, the officer may:

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

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

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

1 (f) After a determination under paragraphs (d) and (e) of this subsection that an investigation
2 is warranted, the investigator assigned to the matter under subsection (14)(c) of this rule shall
3 promptly:

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

6 (B) If the respondent:

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

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

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

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

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

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

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

21 (h) Upon delivery of the conduct complaint as prescribed in paragraph (f) of this subsection, the
22 investigator shall promptly begin the investigation described in subsection (14) of this rule and re-
23 commend any necessary interim safety measures as described in subsection (13) of this rule.

24 (i) **The complaint and any supporting documentation is subject to disclosure under ORS**
25 **192.311 to 192.478.**

26 (13) Interim safety measures.

27 (a) Upon receipt of a [*conduct report made under subsection (11) of this rule or a*] conduct com-
28 plaint made under subsection (12) of this rule, or at any time during the course of an investigation,
29 the investigator assigned to this matter under subsection (14)(c) of this rule may determine that an
30 interim safety measure needs to be implemented to ensure the safety of the complainant or any other
31 individual who has experienced behavior that is prohibited by this rule or who may reasonably be
32 foreseen as at risk of being subjected to behavior that is prohibited by this rule. The Legislative
33 Equity Officer or an offsite process counselor may also recommend an interim safety measure if in-
34 terim safety measures are sought by an individual making a confidential disclosure under subsection
35 (10) of this rule. **If, as the result of a confidential disclosure made under subsection (10) of this**
36 **rule, an interim safety measure is to be imposed, the disclosure and any records pertaining**
37 **to the disclosure become subject to required disclosure in response to a public records re-**
38 **quest under ORS 192.311 to 192.478.** The investigator, officer or counselor may recommend any
39 interim safety measure that they determine is appropriate to the situation, including but not limited
40 to:

41 (A) Temporary reassignment;

42 (B) Alternative work location, including being duty-stationed at home;

43 (C) Establishing a no contact order;

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

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

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

4 (b) An interim safety measure, whether described in paragraph (a) of this subsection or other-
5 wise, may be applied to a complainant, impacted party or respondent, except that an interim safety
6 measure that is recommended or that is implemented may not prejudice a complainant or impacted
7 party or put a complainant or impacted party in a worse position than the complainant or impacted
8 party was in before the complaint was made.

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

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

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

17 (A) The committee on conduct of the chamber in which the respondent serves is authorized to
18 impose an interim safety measure on the respondent that lasts no longer than until the complaint
19 is resolved;

20 (B) The investigator shall report the investigator's interim safety recommendation and the rea-
21 sons for the recommendation to the respondent, to the committee and to the presiding officer of the
22 chamber; and

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

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

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

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

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

35 (f) The person who receives the investigator's interim safety recommendation made under para-
36 graph (e) of this subsection shall act promptly on the recommendation.

37 *[(g) The Legislative Equity Officer or an offsite process counselor that has received a confidential*
38 *disclosure under subsection (10) of this rule may recommend interim safety measures under this sub-*
39 *section if requested by the individual making a disclosure under subsection (10) of this rule, except that*
40 *the interim safety measure may not:]*

41 *[(A) Identify the individual making the confidential disclosure without the consent of the individ-*
42 *ual; or]*

43 *[(B) Penalize or place the person who is the subject of the disclosure in a worse position than be-*
44 *fore the disclosure was made.]*

45 *[(h)(A)]* (g)(A) If a complainant, impacted party or respondent is a member of the Legislative

1 Assembly, the member may voluntarily agree to comply with an interim safety measure that con-
 2 forms with paragraphs (a), (b) and (c) of this subsection, if the interim safety measure is also ap-
 3 proved by the cochairpersons of the appropriate committee on conduct.

4 (B) An interim safety measure that is voluntarily agreed to under this paragraph carries the full
 5 weight and effect of an interim safety measure imposed under this subsection.

6 (C) If a respondent or other party subject to a voluntary interim safety measure under this
 7 paragraph fails to comply with the interim safety measure, the agreement is revocable by the
 8 cochairpersons of the appropriate committee on conduct.

9 (D) If a voluntary agreement is revoked under subparagraph (C) of this paragraph, an interim
 10 safety measure may be imposed as prescribed in paragraphs (a) to (d) of this subsection and the re-
 11 vocation may be taken into account in determining any remedial measure recommended or imposed
 12 under subsection (15) of this rule.

13 (14) Investigations.

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

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

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

21 (b) Pursuant to ORS 173.909, the Legislative Equity Officer may determine to hire an investi-
 22 gator as an employee of the Legislative Equity Office. A Legislative Equity Office employee hired
 23 as an investigator must meet all applicable standards and criteria adopted by the committee under
 24 paragraph (a) of this subsection.

25 (c) At the time that a facial review of a [*conduct report or*] conduct complaint is undertaken, the
 26 Legislative Equity Officer shall determine whether the investigation is to be performed by an inde-
 27 pendent investigator or by an investigator who is an employee of the Legislative Equity Office, ex-
 28 cept that if the facial review is being performed by an independent investigator, any investigation
 29 that follows facial review must be performed by an independent investigator.

30 (d)(A) An investigation that is to be conducted under this subsection shall be conducted
 31 promptly and shall be completed as soon as is practicable. The investigation must be completed
 32 within 84 days from the date the complaint is made, except that the Legislative Equity Officer may
 33 extend the time by which the investigation must be completed if the investigator provides advance
 34 notice to the complainant and the respondent of the extension and an explanation justifying the
 35 extension.

36 **(B) At the time that an investigation is commenced, the Legislative Equity Officer shall**
 37 **inform the respondent that the respondent has a right to be represented by counsel unaffil-**
 38 **iated with the Legislative Branch. Any reasonable attorneys fees associated with the repre-**
 39 **sentation of the respondent by counsel shall be paid by the Legislative Equity Officer.**

40 (e)(A) The investigator shall keep the complainant and the respondent apprised of the investi-
 41 gation timeline and the status of the investigation at the outset of an investigation, on a regular
 42 basis thereafter and upon request of the complainant or respondent.

43 **(B) The respondent has a right to discover and inspect any evidence found during the**
 44 **course of the investigation and a right to depose any witnesses interviewed during the course**
 45 **of the investigation.**

1 (f)(A) The investigator shall use best practices in conducting the investigation and shall make
2 findings of fact relevant to the allegations. **When a finding of fact has direct bearing on whether**
3 **conduct occurred that is prohibited by this rule, the finding of fact must be established be-**
4 **yond a reasonable doubt.** The investigator shall prepare draft written findings of fact at least eight
5 days before the investigation must be concluded under paragraph (d) of this subsection and shall
6 provide the draft written findings to the complainant and the respondent.

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

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

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

20 (E) The investigator shall consider responses supplied under subparagraph (D) of this paragraph
21 and shall prepare a final report that sets forth the investigator's findings of fact and considerations
22 regarding the presence or absence of discrimination described in subparagraph (C) of this paragraph.
23 If the respondent is someone other than a member of the Legislative Assembly, the final report
24 should also include a determination by the investigator of whether the facts, **as established beyond**
25 **a reasonable doubt**, constitute a violation of this rule.

26 (g)(A) If a member of the Legislative Assembly is the respondent, the investigator shall deliver
27 the final report to the complainant, the respondent, the Legislative Equity Officer and the committee
28 on conduct for the chamber in which the respondent serves on or before the date established under
29 paragraph (d) of this subsection for the completion of the investigation.

30 (B) The complainant and the respondent may each submit to the appropriate committee on
31 conduct a written challenge to the factual findings set forth in the final report within seven days
32 of receipt of the report. A challenge must identify the factual findings that are the subject of the
33 challenge and articulate the reason those findings are in error **or have failed to be established**
34 **beyond a reasonable doubt.**

35 (C) The committee on conduct shall conduct a hearing on the allegations made in the complaint
36 and the investigator's final report within 21 days of receiving the report from the investigator. The
37 committee shall permit the complainant and the respondent to appear[,] **and** present documents and
38 physical evidence. [*and suggest witnesses. The committee may determine to hear witnesses, but only*
39 *committee members may question witnesses.*] **The complainant and the respondent may call and**
40 **examine witnesses. Witnesses shall be questioned under penalty of perjury.**

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

42 (i) Make a final determination of facts, **as proven beyond a reasonable doubt**;

43 (ii) Make a final determination of whether the facts, **as proven beyond a reasonable doubt**,
44 constitute a violation of this rule; and

45 (iii) If the determination is that a violation of this rule occurred, prescribe or recommend re-

1 remedial measures as described in subsection (15) of this rule.

2 (h) If a member of the Legislative Assembly is the respondent and irrevocably resigns the
3 member's office at any time after the conduct complaint is made, the investigation described in this
4 subsection and the committee on conduct hearing and final committee determinations described in
5 paragraph (g) of this subsection shall nevertheless take place.

6 (i)(A) If someone other than a member of the Legislative Assembly is the respondent, the in-
7 vestigator shall deliver the final report, including proposed findings of violations, to the
8 complainant, the respondent and:

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

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

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

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

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

20 (B) A nonpartisan staff appointing authority who receives the investigator's final report under
21 subparagraph (A)(i) of this paragraph, or the Legislative Administrator upon receiving the
22 investigator's final report under subparagraph (A)(iii) or (iv) of this paragraph, shall determine re-
23 medial measures described in subsection (15) of this rule within 14 days of receiving the
24 investigator's final report.

25 (C) The appropriate committee on conduct that receives the investigator's final report under
26 subparagraph (A)(ii) of this paragraph shall, if the investigator determined that a violation of the
27 rule had occurred, make a recommendation on remedial measures described in subsection (15) of this
28 rule to the supervising member of the Legislative Assembly within 14 days of receiving the
29 investigator's final report. The supervising member of the Legislative Assembly shall consider the
30 recommendations and make a final determination on the remedial measures within 21 days of re-
31 ceiving the investigator's final report.

32 (15) Remedial measures.

33 (a) In a case where the respondent is a member of the Legislative Assembly and the appropriate
34 committee on conduct has made a determination under subsection (14)(g) of this rule that a violation
35 of this rule has occurred, the committee shall impose any remedial measure that is sufficient to
36 reprimand the member and deter future conduct that violates the rule, including but not limited to
37 a reprimand, monetary fine or other remedy that the committee determines is appropriate under the
38 circumstances:

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

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

45 (C) Including the removal of the member from the committee on conduct. If a member is removed

1 from the committee on conduct under this subsection, the member also is removed from the Joint
2 Committee on Conduct.

3 **(b)(A) If permitted under Article IV, section 15, of the Oregon Constitution, a respondent**
4 **who is a member of the Legislative Assembly and upon whom a remedial measure described**
5 **in paragraph (a) of this subsection has been imposed may appeal the determination to the**
6 **Marion County Circuit Court. The court shall conduct a de novo review of the matter being**
7 **appealed.**

8 **(B) The respondent shall give notice of the appeal to the Legislative Equity Officer within**
9 **five days following the imposition of a remedial measure described in paragraph (a) of this**
10 **subsection.**

11 **(C) Following notice of the appeal being timely given, all remedial measures imposed un-**
12 **der paragraph (a) of this subsection shall be stayed pending final disposition of the appeal.**

13 [(b)(A)] **(c)(A)** In a case where the respondent is a Legislative Branch employee in a nonpartisan
14 staff position, the appointing authority, in consultation with the Human Resources Director, shall
15 determine an appropriate remedy that is consistent with the investigator's determination that the
16 respondent violated the requirements of this rule.

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

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

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

23 (iii) A claim that the investigator or the person or committee that imposed a remedial measure
24 acted with bias.

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

26 [(c)(A)] **(d)(A)** In a case where the respondent is a Legislative Branch employee in a partisan
27 staff position, the committee on conduct of the chamber with which the employee is affiliated shall,
28 if the investigator determined that a violation of the rule had occurred, make a recommendation on
29 an appropriate remedy consistent with the investigator's determination that the respondent violated
30 the requirements of this rule. The committee's recommendation shall be made to the member of the
31 Legislative Assembly for whom the respondent works.

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

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

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

42 [(d)(A)] **(e)(A)** In a case where the respondent is a lobbyist, employee of a contractor or other
43 person who is present in the State Capitol for professional or work reasons, or is a member of the
44 public, and the investigator's final report determines that a violation of this rule has occurred, the
45 Legislative Administrator shall determine an appropriate remedy that is consistent with the

1 investigator's determination. The respondent may appeal the investigator's final report or the remedy determined by the Legislative Administrator to the cochairpersons of the Legislative Administration Committee within seven days of the Legislative Administrator's determination, except that
 2
 3 any appeal must be based only on a claim described in paragraph [(b)(B)] (c)(B) of this subsection.
 4

5 (B) If the respondent is a lobbyist, employee of a contractor or other person who is present in
 6 the State Capitol for professional or work reasons, the Legislative Administrator shall provide notice of the proposed remedy under this paragraph to the respondent and the respondent's employer
 7 within 14 days of receiving the final report from the investigator. If the respondent is a lobbyist who
 8 is a member of an association of professional lobbyists, the Legislative Administrator shall also
 9 provide notice of the proposed remedy to the association.
 10

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

13 **(f) Any appeal described in paragraph (c), (d) or (e) of this subsection may be subsequently appealed to the Marion County Circuit Court. The court shall conduct de novo judicial review of the matter being appealed.**
 14
 15

16 [(e)] (g) Each officer or entity charged with imposing a remedial measure under this subsection
 17 shall consider and weigh the presence or absence of discrimination as described in subsection
 18 (14)(f)(C) of this rule in the conduct found to be a violation of this rule. Because the Legislative
 19 Branch is committed to promoting a safe, respectful and inclusive workplace and environment in the
 20 State Capitol, a finding that discrimination was present in the conduct found to be a violation of this
 21 rule justifies enhancing the severity of the remedial measure to be imposed.

22 [(f)] (h) In addition to the follow-up described in subsection (9)(b) of this rule, the Legislative
 23 Equity Officer shall engage in final process counseling with a complainant or an impacted party as
 24 soon as is practicable after:

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

26 (B) A final determination is made under this subsection concerning the imposition of remedial
 27 measures.

28 [(g)] (i) A committee on conduct or any other person or entity in the Legislative Branch may
 29 not require or coerce an employee to enter into a nondisclosure agreement or a nondisparagement
 30 agreement.

31 [(h)] (j) Notwithstanding paragraph [(g)] (i) of this subsection, an impacted party may voluntarily
 32 request to enter into an agreement described in ORS 659A.370 (2), except that:

33 (A) The employee has seven days after executing the agreement to revoke the agreement; and

34 (B) An agreement with the Legislative Branch or any agency or office of the Legislative Branch
 35 may not require an expenditure of public funds that is contrary to law.

36 (16) Confidentiality and transparency.

37 (a) The investigator undertaking an investigation under subsection (14) of this rule and the
 38 Legislative Equity Officer shall provide as much privacy as possible during the course of an investigation.
 39

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

42 (A) The investigator may disclose the fact of the investigation and any relevant details of the
 43 investigation to the appointing authority of the complainant and the respondent and the Joint
 44 Committee on Conduct, if the investigator determines there is a legitimate need to disclose the information;
 45 and

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

4 (c) A conduct complaint made under subsection (12) of this rule is disclosable upon being made
 5 under subsection (12) of this rule, but all records relating to an ongoing investigation under sub-
 6 section (14) of this rule shall be maintained in confidence **until an investigation report is finalized**
 7 **under subsection (14)(f)(E) of this rule.**

8 (d) **Upon an investigation report being finalized under subsection (14)(f)(E) of this rule,**
 9 records and information of the investigator and the Legislative Equity Officer shall be [*exempt*
 10 *from*] **subject to** disclosure as prescribed under applicable law, [*except that, also as prescribed under*
 11 *applicable law*] **including:**

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

13 (B) Records relating to [*a member of the Legislative Assembly following a conduct complaint being*
 14 *made concerning the member are subject to disclosure*] **an investigation made under subsection (14)**
 15 **of this rule** after the fact-finding investigation has concluded, even if a legislative committee has
 16 not yet met or deliberated on the investigation's findings; and

17 (C) Records relating to an investigation of allegations of conduct prohibited by legislative
 18 branch personnel rules [*and not described in subparagraph (A) or (B) of this paragraph are subject*
 19 *to disclosure upon a determination being made that the*] **without regard to whether a** person who
 20 was the subject of the investigation is subject to remedial measures or discipline.

21 (17) Establishment of committees on conduct.

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

28 (B) At the time the Senate determines membership of the committee, the Senate shall appoint
 29 one of the committee members from the majority party and one of the committee members from the
 30 minority party to be cochairpersons of the Senate Committee on Conduct. If a cochairperson is un-
 31 able to serve as cochairperson, the other member from the same party shall serve as acting
 32 cochairperson until the initial cochairperson is again able to serve as cochairperson or until the
 33 Senate approves the appointment of another cochairperson.

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

36 (D) The Senate shall appoint members and cochairpersons of the Senate Committee on Conduct
 37 within 15 days after the date of the convening of an organizational session of the odd-numbered year
 38 regular session of the Legislative Assembly, as soon as practicable after a vacancy occurs or as soon
 39 as practicable after this rule takes effect.

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

1 caucus.

2 (B) At the time the House of Representatives determines membership of the committee, the
3 House shall appoint one of the committee members from the majority party and one of the committee
4 members from the minority party to be cochairpersons of the House Committee on Conduct. If a
5 cochairperson is unable to serve as cochairperson, the other member from the same party shall
6 serve as acting cochairperson until the initial cochairperson is again able to serve as cochairperson
7 or until the House approves the appointment of another cochairperson.

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

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

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

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

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

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

29 (18) Respectful workplace policies.

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

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

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

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

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

44 (19) Prohibition on double jeopardy.

45 **A person who is subject to the requirements of this rule may not be accused of violating**

1 **this rule for the same conduct that was previously investigated and that resulted either in**
2 **an absence of remedial measures being imposed or imposed remedial measures being com-**
3 **pleted or satisfied.**

4 [(19)] (20) Application.

5 The five-year limitation in [subsections (11)(a) and] **subsection** (12)(a) of this rule applies to
6 conduct occurring before, on or after the effective date of this rule, but does not operate to revive
7 a claim barred by a previous iteration of this rule.

8
9 **Legislative Branch Personnel Rule 27-C:**

10 (1) **The amendments to Legislative Branch Personnel Rule 27 by this concurrent resolu-**
11 **tion apply to confidential disclosures and conduct complaints that are made on or after the**
12 **date this concurrent resolution is adopted, and to interim safety measures that begin on or**
13 **after the date this concurrent resolution is adopted and to investigations that begin on or**
14 **after the date this concurrent resolution is adopted and that are begun because of a confi-**
15 **dential disclosure or a complaint made on or after the date this concurrent resolution is**
16 **adopted.**

17 (2) **This rule is repealed on December 31, 2029.**

18