

February 20, 2019

To: Joint Committee on Capitol Culture

Re: HCR 20/PR 27

Thank you for considering these comments about the new proposed PR 27. As one of only three individuals to use a formal complaint process under PR 27, I have a keen interest in an effective new rule that is accessible and affirming to those who need to use it. I hope we can design a new rule that meets everyone's needs. For organizational purposes, I will address the proposal section by section.

Section 1

- Language should be added to clarify the Legislature will take action even in the absence of a complaint to create a safe workplace. Safety should not be contingent on a complaint.
- The language in this section should also include a rejection of retaliation against those working for a safe workplace
- Electronic spaces and social media may be challenging to regulate in both practical and constitutional ways

Section 2

- With this language, personal staff who supervise other staff, interns or volunteers would be mandatory reporters. Is this the intention?
- Are all supervisors and members mandatory reporters for behaviors they personally experience? Is that the intention? If so does that mean that no person that supervises another person has a confidential reporting option?

Section 4 and 5

- Are these definitions consistent with the work we are doing in SB 726?
- Isn't sexual harassment a form of sex discrimination instead of the opposite?

Section 6

- These protections are around individuals that take particular action through a complaint or an investigation. Should it be expanded to include those who speak out about the culture in general? What about whistleblowers?
- There should be immediate relief for retaliation. Forcing a person into another complaint process to address retaliation is overly burdensome

Section 8

- Using the terms "confidential" and "nonconfidential" is confusing for a variety of reasons. First, it could cause an individual to believe they are not permitted to speak about their experience if they use the confidential option. It could also suggest that if one made a "nonconfidential" report that the person's personal information may be widely shared without the individual's consent. Perhaps better terms would be

“Process counseling” and “Informal complaint.” This would more accurately describe the activities at each level.

Section 9

- Confidential disclosure should be called “process counseling” to more accurately describe this function, which is to help an individual sort through available options. It needs to be clear to the individual that “process counseling” will not necessarily lead to discipline or change. However, we also need to ensure that this does lead to employer taking any needed action to keep that individual or others safe--- even if it means conducting an investigation or intervention without the complainant.
- Each individual choosing “process counseling” should be provided clear, written information about all options (in and out of workplace) available to address harassment. This should include the informal and formal complaint process, complaints to BOLI, and criminal and civil options. It should also include statutes of limitations for each, contact information and the tort claims notice timeline. It should include statement of individual’s right to speak about their own experience. It should also include information about counseling and legal services available through the Employee Assistance program.
- If the privilege bill passes, the individual should be advised that unless the person releases privilege, the fact that the information was shared with the Equity Office cannot be made available to an investigator, or used in a future legislative disciplinary process. They should also be advised this means information from that discussion could never be disclosed to BOLI, or to any civil or criminal proceeding to which the information may be relevant. The individual should be given a consent form to sign that indicates for which elements the person wants to retain the privilege, if any. The individual should also be advised that when information is released, their personally identifiable information can generally be protected.
- The Equity Officer should be permitted and required to share the name of an alleged perpetrator if more than one individual complains about that alleged perpetrator.
- The Equity Officer should not opine about whether something constitutes prohibited conduct. This could unreasonably discourage an individual from reporting if they have not yet shared all of the details
- The Equity Officer should be required to follow up with the reporting individual at least twice to ensure they are safe and that the harassment is not continuing. The individual should be informed this will happen and be given the opportunity to sign a statement declining follow up.
- The individual should be asked about any requested or needed safety measures and be informed of the institution’s obligation to provide a safe workplace regardless of whether the individual chooses to pursue an informal or formal complaint
- The policy shall make it clear that no person shall cause a complainant to believe that the complainant may not discuss the complaint, the circumstances surrounded the complaint, or the events leading to the complaint whether before, during or after the investigation

Section 10

- This should not be called a non-confidential report. That language could inappropriately discourage an individual from making a report. I suggest calling this an informal report
- The reporting party should be provided with clear, written information about all options (in and out of workplace) available to address harassment. This should include the informal and formal complaint process, complaints to BOLI, and criminal and civil options. It should also include statutes of limitations for each, contact information and the tort claims notice timeline. It should include statement of individual's right to speak about their own experience. It should also include information about counseling and legal services available through the Employee Assistance program.
- The Equity Office should be required to follow up with the reporting individual at least twice to ensure they are safe and that the harassment is not continuing and that the person has not experienced retaliation. The individual should be informed this will happen and be given the opportunity to sign a statement declining follow up.
- The individual should be asked about any requested or needed safety measures and be informed of the institution's obligation to provide a safe workplace.
- The policy shall make it clear that no person shall cause a complainant to believe that the complainant may not discuss the complaint, the circumstances surrounded the complaint, or the events leading to the complaint whether before, during or after the investigation

Section 11

- There should not be language about perjury. This is unnecessarily frightening to an individual who may believe they risk criminal or civil sanctions if their truthful report cannot be substantiated
- The individual should be asked about any requested or needed safety measures and be informed of the institution's obligation to provide a safe workplace.
- Any person should be permitted to file a formal complaint or trigger an investigation—not just the victim
- The policy shall make it clear that no person shall cause a complainant to believe that the complainant may not discuss the complaint, the circumstances surrounded the complaint, or the events leading to the complaint whether before, during or after the investigation

Section 12

- The recommendations about interim safety measures should broadly consider potential future victims

- These recommendations should be made to the presiding officer or the appointing authority, not a Conduct Committee unless the recommendation is for a constitutionally limited sanction

Section 13

- The timelines should be tightened
- The independent investigator should be the finder of facts. The Conduct Committee should exist to determine the appropriate sanction (if any) based on the facts determined by the independent investigator. A Legislative Committee has too much risk of political influence in reconsidering facts as it relates to the allegations. This is the entire purpose of having an independent investigator
- (f) is very important. The complaint is not just about the remedy. By its public nature, once a complainant has stepped forward they deserve to complete the process. However, if the complainant wishes to request that the hearing be canceled following the resignation of a member they should be permitted to do so
- It is unclear when the report becomes public. The report should become public immediately after the report is finalized following requests for changes. Individuals in the report identified as victims (including victims who are not the complainants) should be notified prior to public release and copies of the report should be provided directly to them
- The policy shall make it clear that no person shall cause a complainant to believe that the complainant may not discuss the complaint, the circumstances surrounding the complaint, or the events leading to the complaint whether before, during or after the investigation
- The complainant and respondent, and their attorney, should be allowed to request witnesses and ask questions

Section 14

- Rather than being appointed by caucus leaders, conduct committee members should be elected by the body
- Consideration should be given to inclusion of lobby and staff members for deliberations and policy decisions of the Conduct Committee. These voices should be included as advisory voices to the Conduct Committee when determining sanctions and remedies

General Issues:

- Equity Office should be truly independent and should not answer to the Conduct Committee.
- There should be a process for an expedited investigation/action in exigent circumstances. We should also consider whether it is appropriate that other rule violations could lead to more rapid convening of a conduct committee or even a vote on the floor but that harassment is in a special category that takes a longer time
- The policy should clearly reflect the mandate to create safe workplace for everyone, regardless of complaints or requests. This should be explicit. Lack of explicit guidance in

this regard led to problems in the Kruse situation (See attached series of emails between Dexter Johnson and me on the topic of protecting women from future harassment)

- The practice should be one that empowers reporters. Those in the process must ensure that confidentiality is not used to silence discussions about harassment. The policy should openly reflect the right of individuals to discuss their workplace culture and conditions. It should also state that no person will lose access to an investigation or complaint or have their case compromised because they choose to speak openly about their situation. (See attached series of emails between Dexter and me urging confidentiality)
- There need to be clear statements regarding retaliation and sanctions for retaliation. As Ms. Montgomery pointed out in her testimony earlier this month, if we addressed retaliation confidentiality would not be an issue
- We have to recognize that even with a great process, our goal must be changing culture. This means Leadership and the Equity Office can't just depend on reports of harassment. They must proactively monitor for unhealthy climate, and intervene in the unspoken situations (like Senator Kruse) that the Capitol has accommodated for too long. It should not be the responsibility of victims of harassment to instigate the change. That is the institution's responsibility.
- The Legislature should consider a fraternization policy that prohibits relationships between members and any staff or interns in the building (excepting spouses/partners established prior to meeting in the building). This should also include a prohibition on relationships between senior staff, personal staff of Legislators, and interns.
- This rule will primarily impact our staff, interns and the lobby. There needs to be a mechanism for these folks to have input on the proposed rules and design of the Equity Commission in a format they do not fear facing retaliation or exposure. Perhaps a facilitated series of meetings could be held without members present so that input can be gathered and organized for submission. In addition, an electronic survey or input could be another method to allow robust input from non-elected individuals in the building.