

House Concurrent Resolution 11

Sponsored by Representative KOTEK (Pre-session filed.)

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.

Adopts prior Legislative Branch Personnel Rules for Eightieth Legislative Assembly, except as modified in concurrent resolution.

Modifies direction to keep information regarding harassment investigation confidential in cases where harassment investigation is undertaken under informal reporting process of legislative branch personnel rules, to exclude individuals directly involved in incident or matter being reported from confidentiality restrictions. Eliminates confidentiality restrictions when formal complaint is made under rules. Expands period of time for which informal report or formal complaint may be made from one year to four years after incident of alleged harassment occurs.

CONCURRENT RESOLUTION

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

That Legislative Branch Personnel Rules as amended and in effect for the Seventy-ninth Legislative Assembly are adopted for the Eightieth Legislative Assembly except as otherwise provided in this concurrent resolution.

Legislative Branch Personnel Rule 27 is amended as follows:

Rule 27. Harassment-Free Workplace.

(1) Policy.

(a) The Legislative Branch is committed to providing a safe and respectful workplace that is free of harassment. 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 events, professional meetings, seminars or any events at which legislative business is conducted.

(b) This rule is designed to provide members and employees with informal and formal options to correct harassing conduct before it rises to the level of severe or pervasive harassment or discrimination. The Legislative Branch encourages members and employees to address potentially harassing conduct through reports to Employee Services or other avenues set forth in this rule.

(2) Terms. As used in this rule:

(a) "Employees" includes legislative interns and volunteers performing services for the Legislative Branch.

(b) "Harassing conduct" or "harassment" includes sexual harassment or workplace harassment. "Harassing conduct" may include conduct by a nonemployee located in the workplace such as a vendor or member of the public.

(c) "Knowledge" of harassing conduct includes conduct about which an appointing authority or supervisor knows or, with the exercise of reasonable care, should know.

(d) "Protected class" means a class of individuals defined by a characteristic that may not be targeted for discrimination, including age, race, sex, sexual orientation, gender, gender identifica-

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 tion, national origin, disability and religion.

2 (e) "Retaliation" means action taken against an employee with respect to a term or condition
3 of employment for the reason that the employee has opposed conduct that is prohibited under this
4 rule.

5 (f) "Sexual harassment" means unwelcome conduct in the form of a sexual advance, sexual
6 comment, request for sexual favors, unwanted or offensive touching or physical contact of a sexual
7 nature, unwanted closeness, impeding or blocking movement, sexual gesture, sexual innuendo, sexual
8 joke, sexually charged language, intimate inquiry, persistent unwanted courting, sexist insult, gender
9 stereotype, or other verbal or physical conduct of a sexual nature, if:

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

12 (B) A person expressly or by implication conveys that declining to submit to the conduct will
13 affect a person's job, leave request, benefits or business before the Legislative Assembly; or

14 (C) The unwelcome conduct has the purpose or effect of unreasonably interfering with a person's
15 job performance, or creates a work environment that a reasonable person would find intimidating,
16 hostile or offensive.

17 (g) "Unwelcome conduct" means conduct that an individual does not incite or solicit and that
18 the individual regards as undesirable or offensive. An individual may withdraw consent to conduct
19 that was previously welcomed by the individual.

20 (h) "Workplace harassment" means unwelcome conduct in the form of treatment or behavior
21 that, to a reasonable person, creates an intimidating, hostile or offensive work environment.
22 "Workplace harassment" includes discrimination based on a person's protected class. "Workplace
23 harassment" also includes unwelcome conduct that occurs outside of work during nonworking hours
24 if the conduct creates a work environment that a reasonable employee would find intimidating,
25 hostile or offensive. "Workplace harassment" does not include every minor annoyance or disap-
26 pointment that an employee may encounter in the course of performing the employee's job.

27 (3) Appointing authorities and supervisors.

28 (a) As used in this subsection, "supervisor" means a person who directs the regular work as-
29 signments of any employee.

30 (b) An appointing authority or supervisor shall take appropriate action to prevent, promptly
31 correct and report harassment about which the appointing authority or supervisor knew or, with the
32 exercise of reasonable care, should have known. "Harassing conduct" may include conduct by a
33 nonemployee located in the workplace such as a vendor or member of the public.

34 (c) If an appointing authority or supervisor has knowledge of harassing conduct, the appointing
35 authority or supervisor shall report the conduct to the Human Resources Director or the Legislative
36 Counsel.

37 (4) Members or employees subjected to harassment.

38 (a) A member of the Legislative Assembly or employee of the Legislative Branch who is subject
39 to what the member or employee believes to be harassment should report the conduct as soon as
40 possible.

41 (b) An employee may report what the employee believes to be harassment to any of the following
42 individuals:

43 (A) The employee's supervisor. An employee may report conduct that the employee believes to
44 be harassing conduct to the employee's supervisor. If an employee does not have a supervisor or is
45 unaware of a supervisor, an employee may report concerns to other individuals listed in subpara-

1 graphs (B) to (D) of this paragraph.

2 (B) The employee's appointing authority. An employee may report conduct that the employee
3 believes to be harassing conduct to the employee's appointing authority.

4 (C) Employee Services. An employee may report conduct that the employee believes to be har-
5 assing conduct to Employee Services.

6 (D) The Office of the Legislative Counsel. An employee may report conduct that the employee
7 believes to be harassing conduct to the Legislative Counsel. The Legislative Counsel shall direct
8 employees with concerns regarding harassing conduct to designated staff within the Office of the
9 Legislative Counsel.

10 (c) A member may report what the member believes to be harassment to any of the following
11 individuals:

12 (A) Employee Services. A member may report conduct that the member believes to be harassing
13 conduct to Employee Services.

14 (B) The Office of the Legislative Counsel. A member may report conduct that the member be-
15 lieves to be harassing conduct to the Legislative Counsel or the Chief Deputy Legislative Counsel.

16 (d) If an employee works for the person alleged to be involved in the harassment, the employee
17 should report to an alternative point of contact listed in this subsection.

18 (5) Informal reporting process.

19 (a) A person who believes that the person may have been subjected to harassment may simply
20 want particular conduct to stop, but may not want to go through a formal complaint process or legal
21 proceeding. The informal reporting process is designed and intended to meet that need.

22 (b) A member of the Legislative Assembly or employee of the Legislative Branch may, within
23 [one year] **four years** of the date of the alleged harassment, initiate an informal reporting process
24 described in this subsection by reporting the harassing conduct to any of the parties listed in sub-
25 section (4) of this rule.

26 (c) The report must include specific details of the alleged harassment, the name of the person
27 alleged to be involved in the harassment and the dates and times of the alleged harassment.

28 (d) Except as subject to applicable statutes of limitation and time limitations set forth in this
29 rule, the selection of any one option does not preclude a reporting party from pursuing other options
30 at any time.

31 (e) Even if no report is generated, Employee Services, in consultation with the Legislative
32 Counsel, shall investigate instances of severe or pervasive harassment or discrimination based on
33 a protected class, which may result in corrective action against a member or employee who engages
34 in harassment as described in this rule.

35 (f) When an informal report is made under this subsection, Employee Services or the Legislative
36 Counsel shall immediately take appropriate action to ensure that the reporting party has a safe and
37 nonhostile work environment.

38 (g) If Employee Services conducts an investigation based on a report under this subsection,
39 subject to the reporting requirement under subsection (3) of this rule, all members and employees
40 involved in the investigation shall cooperate and keep information regarding the matter confidential.
41 However[,]:

42 (A) Certain Legislative Branch records are subject to public records requests under ORS
43 192.410 to 192.505.

44 (B) **Individuals directly involved in the incident or matter being reported are not subject**
45 **to confidentiality restrictions.**

1 (h) After an informal report is made, or at any time during the informal reporting process, a
2 reporting party may decide to institute a formal complaint process under subsection (6) of this rule.

3 (i) Institution of a formal complaint process supersedes and terminates any informal reporting
4 process brought by the reporting party.

5 (6) Formal complaint process.

6 (a) A member of the Legislative Assembly or employee of the Legislative Branch may, within
7 [one year] **four years** of the date of the harassment, initiate a formal complaint process by submit-
8 ting a complaint with the Human Resources Director. In the event of a conflict with the Human
9 Resources Director, the member or employee may initiate a formal complaint process with a repre-
10 sentative from Employee Services or the Chief Deputy Legislative Counsel.

11 (b) A formal complaint shall be in writing and include:

12 (A) The name of the complainant;

13 (B) The name of the person or persons alleged to be involved in the harassment;

14 (C) The names of all parties involved, including witnesses;

15 (D) A description of the conduct that the member or employee believes is discriminatory or
16 harassing;

17 (E) The date or time period in which the alleged conduct occurred; and

18 (F) A description of the potential remedy the member or employee desires.

19 (c) The office or person that receives the complaint may require that an incomplete complaint
20 be supplemented by the complainant to correct deficiencies.

21 (d) When a formal complaint is submitted, Employee Services or the Office of Legislative Coun-
22 sel shall immediately take appropriate action to ensure that the complainant has a safe and non-
23 hostile work environment.

24 (e) The persons who receive a formal complaint shall, within 10 days after receipt of the com-
25 plaint, appoint an investigator. In all instances in which the person alleged to be involved in the
26 harassment is a member of the Legislative Assembly, the investigator may not be an employee of the
27 Legislative Branch and shall have experience conducting investigations of harassment. With respect
28 to any other complaint, the persons who receive the complaint shall appoint an investigator who is
29 an employee of Employee Services, an employee of the Office of Legislative Counsel or an investi-
30 gator unaffiliated with the Legislative Branch with experience conducting investigations of
31 harassment.

32 (f) All members and employees involved in the investigation shall cooperate with the investi-
33 gation [*and keep information regarding the investigation confidential. However, certain Legislative*
34 *Branch records are subject to public records requests under ORS 192.410 to 192.505*].

35 (g) The person alleged to be involved in the harassment shall be notified that a formal complaint
36 has been received and an investigation has been initiated.

37 (h) The investigator shall conduct an investigation and present a draft findings of fact and rec-
38 ommendations within 60 days of appointment under paragraph (e) of this subsection. The investi-
39 gator may be granted an extension of time by the Human Resources Director or the Office of
40 Legislative Counsel to complete the investigation.

41 (i) Notification and copies of the draft findings of fact and recommendations will be given to the
42 Human Resources Director, the Office of the Legislative Counsel, the complainant and the person
43 alleged to be involved in the harassment.

44 (j) Within five days after notification under paragraph (i) of this subsection, recipients may re-
45 quest modifications to the findings of fact. Any requests to modify the findings of fact must be made

1 in writing and must explain the reason for the modification. Requests for modification may be
2 granted at the discretion of Employee Services and the Office of the Legislative Counsel.

3 (k) Within 10 days after receipt of the final report, the Human Resources Director or the Office
4 of the Legislative Counsel shall submit the investigator's final findings and recommendations report
5 to the complainant, the person alleged to be involved in the harassment and the appointing authority
6 of the person alleged to be involved in the harassment.

7 (L) The appointing authority shall act on recommendations received as soon as practicable after
8 receipt.

9 (m) Even if no formal complaint process is initiated, Employee Services, in consultation with the
10 Office of the Legislative Counsel, shall investigate instances of severe or pervasive harassment or
11 discrimination based on a protected class, which may result in corrective action against a member
12 or employee who engages in harassment as described in this rule.

13 (7) Reporting requirements for informal reports and formal complaints.

14 (a) Appointing authorities and supervisors shall report allegations of, or knowledge of, alleged
15 harassing conduct to the Human Resources Director or the Legislative Counsel.

16 (b) If a party informally reports harassment and wishes the report to remain anonymous or
17 wishes that no action be taken, the Human Resources Director or the Legislative Counsel shall de-
18 termine appropriate action.

19 (c) In the case of an informal report of harassing conduct and with consent from the party
20 making the report, Employee Services or the Legislative Counsel shall take the following steps, in
21 addition to any steps taken under paragraph (b) of this subsection:

22 (A) If the person alleged to be involved in the harassment is a member of the Legislative As-
23 sembly, notify the highest ranking member of the same caucus as the alleged harasser of the fact
24 that a report has been made and the name of the reporting party. The highest ranking member shall
25 immediately notify the alleged harasser of the fact that a report has been made under this rule and
26 the name of the reporting party.

27 (B) If the member alleged to be involved in the harassment is the highest ranking member of a
28 caucus, notify the presiding officer of the chamber in which the alleged harasser serves, or if the
29 member alleged to be involved in the harassment is the presiding officer, notify the caucus leader
30 of the same caucus as the presiding officer. The member who is notified of the report shall imme-
31 diately notify the alleged harasser of the fact that a report has been made under this rule and the
32 name of the reporting party.

33 (C) If the person alleged to be involved in the harassment is a personal staff member, caucus
34 staff member or leadership office staff member, notify the appointing authority of the fact that a
35 report has been made and the name of the reporting party. The appointing authority shall imme-
36 diately notify the alleged harasser of the fact that a report has been made and the name of the re-
37 porting party.

38 (D) If the person alleged to be involved in the harassment is a member of the nonpartisan staff,
39 notify the agency head or parliamentarian of the agency or parliamentary office of which the alleged
40 harasser is an employee. The agency head or parliamentarian shall immediately notify the alleged
41 harasser of the fact that a report has been made and the name of the reporting party.

42 (E) If the person alleged to be involved in the harassment is an agency head, notify the presiding
43 officers. The presiding officers shall immediately notify the alleged harasser of the fact that a report
44 has been made and the name of the reporting party.

45 (F) If the person alleged to be involved in the harassment is a parliamentarian, notify the pre-

1 siding officer of the chamber that elected the parliamentarian. The presiding officer shall imme-
2 diately notify the alleged harasser of the fact that a report has been made and the name of the
3 reporting party.

4 (d) In the case of a formal complaint, in addition to any steps taken under subsection (6) of this
5 section, the office receiving the formal complaint shall deliver a copy of the formal complaint:

6 (A) In a case where the person alleged to be involved in the harassment is a member of the
7 Legislative Assembly, personal staff member, caucus staff member or leadership office staff member,
8 to the highest ranking member of the caucus of the chamber in which the alleged harasser serves
9 or works.

10 (B) In a case where the person alleged to be involved in the harassment is an employee of a
11 legislative agency, to the agency head.

12 (C) In a case where the person alleged to be involved in the harassment is an employee of a
13 parliamentary office, to the parliamentarian of the chamber the parliamentary office serves.

14 (e) Notwithstanding paragraph (d) of this subsection, if the person alleged to be involved in the
15 harassment is a person required under paragraph (d) of this subsection to receive the written com-
16 plaint, then in lieu of service under paragraph (d) of this subsection, the office receiving the report
17 shall deliver a copy of the report:

18 (A) In a case where the person alleged to be involved in the harassment is a caucus leader or
19 a parliamentarian, to the presiding officer of the chamber in which the caucus leader or
20 parliamentarian serves.

21 (B) In a case where the person alleged to be involved in the harassment is a presiding officer,
22 to the caucus leader of the same caucus and chamber as the presiding officer.

23 (C) In a case where the person alleged to be involved in the harassment is an agency head, the
24 Human Resources Director or the Legislative Counsel, to the presiding officers of both chambers.

25 (8) Formal complaints against members.

26 (a) If the person alleged to be involved in the harassment is a member of the Legislative As-
27 sembly, the final report shall be given to the respective special committee on conduct of the cham-
28 ber in which the member serves. Special committees on conduct are established as prescribed in
29 subsection (12) of this rule.

30 (b) When a special committee on conduct receives an investigator's final findings and recom-
31 mendations report, the committee shall schedule a public hearing and give notice to the complainant
32 and alleged harasser of the date and location of the hearing. The hearing may not be set for a date
33 that is less than 14 days nor more than 45 days after the committee receives the investigator's final
34 report.

35 (c) At the hearing, the complainant and the alleged harasser, or their attorneys, may present
36 documents or other evidence and may suggest witnesses. Only committee members may question or
37 otherwise address witnesses. Committee members shall limit the scope of their questions to topics
38 that a court in this state would deem relevant in a civil action involving the same conduct.

39 (d) The committee shall deliberate on the investigator's final report, testimony and other evi-
40 dence presented at the hearing and report a recommendation. The committee may recommend:

41 (A) Reprimand;

42 (B) Censure;

43 (C) Expulsion; or

44 (D) That the committee take no further action.

45 (e) The committee shall report its recommendation to the complainant and the person alleged

1 to be involved in the harassment. The complainant and the person shall each have 10 days to re-
2 quest that the committee review the recommendations. A request for review shall be in writing and
3 shall state the requester's objections to the recommendation. A copy of the request for review shall
4 be given to the other party, who shall have five days to respond in writing to the request for review.
5 The committee shall consider the request for review and response and report its recommendation
6 within 10 days after the date for the filing of the response to a request for review.

7 (f) At the end of any review period under paragraph (e) of this subsection, the committee's rec-
8 ommendation shall be made to the chamber for which the committee serves. The chamber shall take
9 action on the recommendation on the next day that it convenes. Any sanction considered by a
10 chamber shall be adopted by the chamber only upon receiving at least a two-thirds majority vote in
11 favor of adoption of the sanction.

12 (9) Independent investigator costs. The costs of an independent investigator hired pursuant to
13 this rule shall be borne by the Legislative Assembly.

14 (10) Retaliation prohibited. Retaliation against any person who participates in a process de-
15 scribed in this rule is prohibited. Retaliation constitutes harassment under this rule.

16 (11) Liberty interest hearing for terminated employees.

17 (a) A former employee of the Legislative Branch may request a hearing under this rule within
18 one year of the date of the employee's termination if the employee reasonably believes that the
19 employer has violated the employee's liberty interest.

20 (b) A reasonable belief that an employee's liberty interest has been violated exists if:

21 (A) The employer accuses the employee of conduct that impairs the employee's reputation for
22 honesty, integrity, ethical behavior, morality or other characteristics necessary for continued em-
23 ployment;

24 (B) The accusations were made in connection with the employee's termination;

25 (C) The employee contests the accuracy of the accusations;

26 (D) The employer publicly discloses the accusations; and

27 (E) The accusations foreclose the employee's opportunities for future public employment.

28 (12) Presiding officer duties. As soon as practicable after the Legislative Assembly convenes in
29 organizational session the Senate President and the Speaker of the House of Representatives shall
30 each appoint the members of a special committee on conduct for their respective chambers. Each
31 committee shall consist of an equal number of members from the majority party and the minority
32 party. If a member of a special committee on conduct is the complainant or the person alleged to
33 be involved in the harassment, the appropriate presiding officer shall discharge the member from the
34 committee and appoint another member from the same party.

35 (13) Human Resources Director duties.

36 (a) The Human Resources Director shall give the following notice to all members of the Legis-
37 lative Assembly and employees of the Legislative Branch:

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41 If you believe you have been a victim of harassment, you have options. You can tell the alleged
42 offender about the harassing conduct that disturbed you and ask the alleged offender to stop. You
43 can communicate to the alleged offender in person or in writing. You may also use the informal
44 report or formal complaint process set forth in Legislative Branch Personnel Rule 27 to pursue a
45 report or complaint of harassment if you:

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- 1 (A) Do not want to confront the alleged offender directly;
2 (B) Have talked to the alleged offender and the harassing conduct has not stopped; or
3 (C) Believe your report or complaint has resulted in retaliation. In addition, you have the right
4 to seek redress with administrative agencies or the courts.
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7 (b) The Human Resources Director shall ensure that the text of the notice set forth in paragraph
8 (a) of this subsection is posted in common work areas for all members and employees, and is avail-
9 able on the Legislative Intranet.

10 (c) The Human Resources Director shall notify all employees that an employee who engages in
11 harassment as described in this rule may be subject to discipline, including dismissal.

12 (d) The Human Resources Director shall notify all employees involved in any aspect of an in-
13 vestigation conducted under this rule that retaliating against a person for making a report or com-
14 plaint of discrimination, workplace harassment or sexual harassment will not be tolerated and that
15 employees engaging in harassing conduct in violation of this policy may be subject to disciplinary
16 action, including dismissal.

17 (e) The Human Resources Director shall notify members and employees with supervisory re-
18 sponsibilities of their obligations under this rule.

19