

# Senate Concurrent Resolution 14

Sponsored by Senator COURTNEY (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.

Adds Legislative Policy and Research Office to rules.

Provides alternative method to adopt or modify rules.

Extends period of time Human Resources Director has to process reclassification requests.

Modifies compensation rules to conform with equal pay laws that become operative in 2019.

Modifies veterans preference and leave rules.

Eliminates direction to keep information regarding harassment investigation confidential in cases where harassment investigation is undertaken under legislative branch personnel rules.

Prohibits retaliation for reporting or exercising rights under safe and healthy workplace rule.

## CONCURRENT RESOLUTION

### 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 1 is amended as follows:

#### **Rule 1. General Provisions.**

(1) General application of rules. Unless otherwise stated in a specific rule, the Legislative Branch Personnel Rules (LBPR) apply to all members and employees of the Legislative Assembly, Legislative Administration, the Legislative Counsel Office, the Legislative Fiscal Office, the Legislative Revenue Office, *[and]* the Legislative Commission on Indian Services **and the Legislative Policy and Research Office**.

(2) Policy. It is the intent of the Legislative Assembly for the Legislative Branch Personnel Rules to encourage a high level of competence and professional capability among legislative staff by providing an orderly, efficient and equitable plan of personnel administration. In the development and application of these rules, continuing recognition must be given to the unique political and administrative requirements of the legislative process and the distinctive relationships among the various units of the Legislative Branch. The Legislative Branch Personnel Rules are intended to serve as uniform procedures that reflect current Legislative Branch employment practices.

(3) Process for modifying personnel rules.

(a) Prior to the adoption, amendment or repeal of any personnel rule by the Legislative Administration Committee, the Legislative Administrator shall give notice of the intended action:

*[(A) At least 30 days before the effective date of the change in rule;]*

*[(B)] (A)* To all agency heads, parliamentarians and leadership chiefs of staff; and

*[(C)] (B)* By providing a copy of the changes to all agency heads, parliamentarians and leadership chiefs of staff.

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

1 (b) Each member and employee of the Legislative Branch shall be made aware of and given ac-  
2 cess to the personnel rules and any subsequent change, rescission or addition to the rules. Each  
3 member and employee is expected to review and become familiar with the rules.

4 (c) **Notwithstanding paragraphs (a) and (b) of this subsection, the President of the Senate**  
5 **and the Speaker of the House of Representatives may establish an alternative procedure for**  
6 **the adoption and modification of personnel rules.**

7 (4) Exempt service and at-will employment.

8 (a) ORS 240.200 specifies that all officers and employees of the Legislative Branch are exempt  
9 service employees and are not generally subject to State Personnel Relations Law. Positions in the  
10 exempt service are not subject to the provisions of the rules and policies of the Oregon Department  
11 of Administrative Services Personnel Division. However, ORS 240.245 provides that a salary plan for  
12 the exempt service must be equitably applied to the exempt position and in reasonable conformity  
13 with the general state salary structure.

14 (b) Legislative Branch employees are at-will employees.

15 (c) Each Legislative Branch employee serves at the will of the employee's appointing authority.  
16 As a result, an employee may be terminated at the discretion of the appointing authority or  
17 designee.

18 (d) Nothing in the personnel rules and related policies is intended to:

19 (A) Create any type of employment contract, whether express or implied;

20 (B) Provide any type of cause standard for evaluation of continued employment; or

21 (C) Give an employee the right to be employed for any specific period of time.

22 (e) Notwithstanding an employee's at-will employment status, corrective action may be taken as  
23 a mechanism for notifying an employee in a continuing status position of performance deficiencies  
24 with an opportunity to make correction, as described in LBPR 9.

25 (f) A personnel rule or related policy may not be construed as setting forth procedural or sub-  
26 stantive provisions that entitle an employee to continued employment.

27 (g) An agreement between an appointing authority and an employee may not be construed as  
28 setting forth procedural or substantive provisions that entitle an employee to continued employment.

29 (5) Application of certain labor laws.

30 (a) The Legislative Branch Personnel Rules constitute rules of proceedings of the Legislative  
31 Assembly and take precedence over conflicting provisions of state law to the extent that the rules  
32 expressly provide for such precedence. Section 4, Mason's Manual of Legislative Procedure (2010  
33 ed.).

34 (b) As provided by 29 U.S.C. 203(e)(2)(C), all Legislative Branch employees, except legislative  
35 library employees, are exempt from the Fair Labor Standards Act (29 U.S.C. 201 et seq.). These rules  
36 may modify state laws implementing the Fair Labor Standards Act to the extent that those laws  
37 apply to Legislative Branch employees.

38 (6) Authority.

39 (a) The authority for the personnel rules is derived from Article IV, section 11, of the Oregon  
40 Constitution, and, where otherwise not in conflict with the rules, ORS 173.005, 173.007, 240.200 and  
41 240.245.

42 (b) The personnel rules shall be known and may be cited as the Legislative Branch Personnel  
43 Rules, the personnel rules or LBPR.

44 (c) The Legislative Administrator is responsible for the administration of the Legislative Branch  
45 personnel system.

1 (d) At the direction of the Legislative Administrator, the Human Resources Director shall pre-  
2 pare, maintain and administer the personnel rules, related policies, a classification system, a com-  
3 pensation plan and recruitment and selection procedures.

4 (e) Agency heads and parliamentarians are responsible within their respective agencies or of-  
5 fices for the exercise of appointing authority, for the supervision of agency or office operations and  
6 for the equitable administration of the personnel rules and related policies.

7 (f) Agency heads and parliamentarians, consistent with the personnel rules and related policies,  
8 are responsible for the selection, appointment and retention of division directors and unit managers.

9 (7) Time records. The payroll administrator shall maintain an official set of employee time re-  
10 cords. The employee and the employee's supervisor, or the designee of the employee's supervisor,  
11 shall approve the employee's time record. Information for time records shall be recorded by the  
12 payroll administrator for each employee, after which the time records will become the basis for the  
13 payroll. An employee's time record maintained under this rule shall include the following informa-  
14 tion:

15 (a) Hours worked by nonexempt employees who are eligible for overtime as provided by LBPR  
16 4 (7);

17 (b) Vacation leave used;

18 (c) Sick leave used;

19 (d) Any other paid leave used; and

20 (e) Unpaid leave used.

21 (8) Interpretation. The interpretation of a personnel rule by an agency head or parliamentarian  
22 is final and binding on the legislative agency or parliamentary office and the employees supervised  
23 by an agency head or parliamentarian. To promote consistency in the interpretation of the personnel  
24 rules throughout the Legislative Branch, an agency head or parliamentarian is encouraged to con-  
25 sult with the Legislative Counsel or the Human Resources Director.

26  
27 Legislative Branch Personnel Rule 2 is amended as follows:

28 **Rule 2. Definitions.**

29 APPLICABILITY: This rule applies to members of the Legislative Assembly and all employees  
30 of the Legislative Branch.

31 The following definitions apply to the Legislative Branch Personnel Rules unless otherwise  
32 noted in a specific rule:

33 (1) "Agency head" means the Legislative Administrator, the Legislative Counsel, the Legislative  
34 Fiscal Officer, the Legislative Revenue Officer, [or] the Executive Director of the Legislative Com-  
35 mission on Indian Services **or the Legislative Policy and Research Director.**

36 (2) "Appointing authority" means the person who has authority in the interest of the employer  
37 to hire, transfer, suspend, lay off, recall, promote, discharge or discipline an employee. "Discharge"  
38 includes dismissal and termination.

39 (3) "At-will employee" means an employee who may be terminated without cause at the dis-  
40 cretion of the appointing authority or designee. All Legislative Branch employees are at-will em-  
41 ployees throughout their service, regardless of the duration of the position or the funding for the  
42 position, including service during an introductory period.

43 (4) "Caucus leader" means the Democratic or Republican Leader of the Senate or the Demo-  
44 cratic or Republican Leader of the House of Representatives.

45 (5) "Caucus office" means the office of the Democratic or Republican Leader of the Senate or

1 the office of the Democratic or Republican Leader of the House of Representatives.

2 (6) "Class," "classification" or "class of positions" means a group of positions sufficiently alike  
3 in duties, authorities and responsibilities that similar qualifications and schedules of compensation  
4 may be applied to the group of positions.

5 (7) "Class specifications" means a document setting forth, for each class, a class title, distin-  
6 guishing features, characteristic duties and necessary knowledge, skills and abilities.

7 (8) "Compensation plan" means the schedule of rates of pay for the various classes and titles in  
8 legislative service.

9 (9) "Compensatory time" means paid time off instead of cash payment for overtime worked.

10 (10) "Continuing status" means a position of indefinite, ongoing duration as opposed to a session  
11 only status position or other position with the Legislative Branch that is filled on a temporary or  
12 limited duration basis.

13 (11) "District office" means any office facility operated for more than 30 days for the benefit of  
14 one or more members of the Legislative Assembly that is not located within the physical structure  
15 of the State Capitol building.

16 (12) "Employee" includes officers elected by the Legislative Assembly but does not include offi-  
17 cers elected by popular vote.

18 (13) "Employee Services" means the division of Legislative Administration charged with em-  
19 ployment and human resources administration for the Legislative Branch. The manager of Employee  
20 Services is the Human Resources Director.

21 (14) "Flexible work schedule" means a work schedule that varies from a regular work schedule  
22 in the number of hours worked, the number of days worked or the starting or stopping times of  
23 work.

24 (15) "Human Resources Director" means the manager of Employee Services.

25 (16) "Introductory period" means the period following the initial appointment to a position in  
26 the Legislative Branch, a change in positions within the Legislative Branch or an appointment to  
27 a position in the Legislative Branch that follows a break in legislative service of at least 12 months'  
28 duration.

29 (17) "Leadership chiefs of staff" means the Chief of Staff of the Office of the Senate President  
30 and the Chief of Staff of the Office of the Speaker of the House of Representatives.

31 (18) "Leadership office" means the Office of the Senate President, the Office of the Speaker of  
32 the House of Representatives.

33 (19) "Legislative agency" means Legislative Administration, the Legislative Counsel Office, the  
34 Legislative Fiscal Office, the Legislative Revenue Office, [or] the Legislative Commission on Indian  
35 Services **or the Legislative Policy and Research Office.**

36 (20) "Legislative Branch" means members and employees of the Legislative Assembly, the par-  
37 liamentary offices, Legislative Administration, the Legislative Counsel Office, the Legislative Fiscal  
38 Office, the Legislative Revenue Office, [and] the Legislative Commission on Indian Services **and the**  
39 **Legislative Policy and Research Office.**

40 (21) "Limited duration status" means an employment status that terminates at the end of a  
41 specified period, and that exists to complete work of certain or limited duration or when position  
42 reduction is anticipated.

43 (22) "Member of the Legislative Assembly" or "member" means a Senator or Representative.

44 (23) "Mobile work" means work performed on a regular basis at a work site other than the  
45 employee's regular work location.

1 (24) "Parliamentarian" means the Secretary of the Senate or the Chief Clerk of the House of  
2 Representatives.

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

5 (26) "Personal staff" means an employee working directly for a legislative member and paid from  
6 the member's services and supply budget.

7 (27) "Presiding officers" means the Senate President and the Speaker of the House of Repre-  
8 sentatives.

9 (28) "Reclassification" means a classification change based on a significant change of position  
10 duties, authority and responsibilities, but with continuation of the same general knowledge and  
11 skills.

12 (29) "Recognized service date" means the date reflecting an employee's initial appointment to  
13 state service, and that is used to determine the employee's vacation accrual rate.

14 (30) "Red-circled" means, when a position is allocated to a lower classification, retention of the  
15 employee's salary rate at the higher classification if the salary rate is above the maximum of the  
16 new, lower classification.

17 (31) "Regular work schedule" means a work schedule of eight hours per day, 40 hours per week.

18 (32) "Salary eligibility date" means the date on which an employee is eligible for consideration  
19 for a merit increase.

20 (33) "Session-only status" means an employment position that occurs during a period that begins  
21 on or after December 1 preceding a regular session and ends on or before the end of the month  
22 following the month in which that regular session adjourns sine die.

23 (34) "Telecommuting" or "performing mobile work" means performing the employee's work on  
24 a regular basis at a work site other than the employee's regular work location.

25 (35) "Temporary status" means a noncompetitive employment status established to cope with  
26 short term or unexpected workload demands when the establishment of a permanently funded posi-  
27 tion is inappropriate or infeasible.

28 (36) "Underfill" means employment of a person in a classification lower than the allocated level  
29 of the position, when there is a reasonable expectation that the employee will meet minimum qual-  
30 ifications of the allocated level within 24 months of appointment.

31 (37) "Work out of class" means a temporary assignment of an employee to assume essentially  
32 all of the duties, authorities and responsibilities of a position classified at a higher salary level, for  
33 a period of 10 or more days.

34  
35 Legislative Branch Personnel Rule 3 is amended as follows:

36 **Rule 3. Classification.**

37 APPLICABILITY: This rule applies to all employees of legislative agencies and parliamentary  
38 offices.

39 (1) Purposes. The purposes of classification are to:

40 (a) Identify and group similar types and levels of work into classes;

41 (b) Describe those classes accurately in order to ensure that the classes are clearly differen-  
42 tiated so that each position can be allocated appropriately;

43 (c) Provide a framework for conducting recruitment and selection activities; and

44 (d) Provide a foundation on which to identify relationships among classes for purposes of salary  
45 administration, in order to achieve equitable comparability in value between work performed by

1 employees in legislative agencies and parliamentary offices, and work performed in other branches  
2 of state government, as reflected in the compensation and classification structure of the state sys-  
3 tem.

4 (2) Goals. The Legislative Branch shall adopt and maintain a branch-wide class specification  
5 plan under which:

6 (a) Legislative agencies group jobs into broad, agency-wide classes whenever possible.

7 (b) Legislative agencies reduce the total number of classes consistent with good management  
8 practices and ORS 240.190 and 243.650 to 243.782.

9 (c) Classes of jobs are discrete and internally consistent.

10 (3) Interpretation of class specifications. All class specifications must describe typical duties  
11 that employees occupying positions in the class may be required to perform. Class specifications  
12 must identify a type and level of work and must be explanatory but not restrictive. The description  
13 of particular tasks in a class specification may not be construed as a detailed statement of the work  
14 requirements of a position and does not preclude the assignment of other appropriate tasks.

15 (4) Allocation of new positions. When a new position is established, the appointing authority  
16 shall submit a position description to Employee Services. An Employee Services team shall review  
17 the duties, authorities and responsibilities of the position and assign an appropriate classification  
18 to the position. If it appears to the team that the duties, authorities and responsibilities require  
19 establishment of a new class of positions, the Human Resources Director shall begin the process of  
20 establishing the class.

21 (5) Submission of reclassification request.

22 (a) An employee who is not in temporary or limited duration status or an appointing authority  
23 may request review of the appropriateness of a classification.

24 (b) Employee requests must be submitted in writing to the appointing authority and must include  
25 what has changed about the job and why the employee believes the assigned duties are inconsistent  
26 with the current classification. The employee must sign and date such a request and, if the  
27 employee's supervisor is someone other than the appointing authority, the employee must provide  
28 a copy of the request to the employee's supervisor. Within 30 calendar days of receiving the request,  
29 the appointing authority shall forward the request to the Human Resources Director. The appointing  
30 authority's submission must include a recommendation, a current position description for the posi-  
31 tion, an explanation of what has changed about the position and a summary of any actions taken  
32 by the appointing authority pertaining to the reclassification request. A copy of this information  
33 shall also be provided to the employee making the request and, if applicable, to the employee's  
34 supervisor.

35 (c) Appointing authority requests based on a proposed reorganization must be submitted to the  
36 Human Resources Director in writing prior to implementing the reorganization and must include:

37 (A) Current and proposed organizational charts;

38 (B) Position descriptions; and

39 (C) Projected classifications.

40 (d) Appointing authority requests based on permanent, substantive changes in duties unrelated  
41 to reorganization (i.e., changes that have evolved over a period of time) must be submitted to the  
42 Human Resources Director in writing prior to making the reclassification change and must include  
43 position descriptions and projected classification.

44 (6) Human Resources Director review of and determination on reclassification request. Within  
45 [60 calendar days] **six months** after receiving a reclassification request involving one position, or

1 within [120 calendar days] **12 months** after receiving a reclassification request involving more than  
2 one position, the Human Resources Director shall review the request and determine the appropriate  
3 classification or classifications. A determination made under this subsection must include the  
4 director's rationale and be submitted in writing to the appointing authority and to any affected  
5 employee.

6 (7) Appeal of Human Resources Director's classification determination. An employee or ap-  
7 pointing authority who disagrees with the Human Resources Director's determination on a reclas-  
8 sification request, or an appointing authority who disagrees with a new position allocation, may  
9 appeal by requesting a second review by the Human Resources Director. The appeal must be re-  
10 ceived by Employee Services within 30 calendar days after the date of the Human Resources  
11 Director's initial determination. The appeal must be made in writing and state the reason why the  
12 appointing authority or employee believes that the determination is erroneous and include any  
13 available documentation that supports the appointing authority's or employee's position. The Human  
14 Resources Director shall review the submitted materials and may consult with other persons or  
15 utilize other resources in resolving the appeal. The Human Resources Director's decision on an ap-  
16 peal shall be provided to both the appointing authority and the employee and shall be final. Once  
17 a decision has been made, an employee may not submit an additional request for reclassification  
18 unless the duties, responsibilities or authorities of the position change significantly.

19 (8) Implementation of classification determinations. Except when a position is underfilled, re-  
20 classifications shall be implemented as follows:

21 (a) Upward reclassification: Within 30 calendar days after receiving the final determination on  
22 a reclassification request, the appointing authority shall take one of the following actions and notify  
23 the incumbent employee and the Human Resources Director of the action taken:

24 (A) Reclassify the position and the incumbent employee to the higher class in accordance with  
25 subsection (9) of this rule and LBPR 4 (3). The effective date for a reclassification shall be the date  
26 of the first day of the month that approval is received.

27 (B) Remove the higher-level duties in order to retain the current classification level and com-  
28 pensate the incumbent employee for working out-of-class from the date the request for reclassifica-  
29 tion is approved by the appointing authority or Human Resources Director.

30 (C) Fill the position, if vacant, by any of the recruitment methods listed in LBPR 6.

31 (b) Downward reclassification: Within 30 calendar days after receiving the final determination  
32 on a reclassification request, the appointing authority shall take one of the following actions and  
33 notify the incumbent employee and the Human Resources Director of the action taken:

34 (A) Reclassify the position and incumbent employee downward into the lower-level class, in ac-  
35 cordance with LBPR 4 (3). The effective date of the reclassification shall be the first day of the  
36 month following the final determination. The salary of an employee that is above the maximum sal-  
37 ary of the new classification will be frozen until the employee's salary falls below the maximum  
38 salary level.

39 (B) Reassign higher-level duties to ensure that the position remains at its current classification  
40 level.

41 (C) Fill the position by any of the recruitment methods listed in LBPR 6. This option applies  
42 only when a vacant position is filled.

43 (c) If a position is underfilled at the time of reclassification, nothing in this rule causes the re-  
44 classification to have the effect of removing the underfill. The appointing authority has the dis-  
45 cretion to remove the underfill at the time of reclassification or at another time.

1 (9) Effect of reclassification or removal of underfill on employment status. Reclassified employ-  
 2 ees and employees removed from underfill shall retain their existing at-will status.

3  
 4 Legislative Branch Personnel Rule 4 is amended as follows:

5 **Rule 4. Compensation and Salary Administration.**

6 **APPLICABILITY:** This rule applies to all employees of legislative agencies and parliamentary  
 7 offices, except that:

8 (a) Subsections (3)(e) and (12) of this rule apply to all Legislative Branch employees who are not  
 9 members of the Legislative Assembly;

10 (b) [*Subsection*] **Subsections (15) and (18)** of this rule [*applies*] **apply** to members of the Legis-  
 11 lative Assembly and all Legislative Branch employees; and

12 (c) Subsections (1) to (14) and (16) of this rule do not apply to temporary status employees.

13 (1) Purpose. The purpose of the compensation plan is to provide a uniform system for establish-  
 14 ing and assigning salary levels and administering pay to recruit and retain a high-quality workforce.

15 (2) Preparation of compensation plan. **Each compensation plan shall comply with the equal**  
 16 **pay and salary history requirements of ORS 652.220 and 659A.357.** For each class of work, a  
 17 minimum and maximum pay rate, and intermediate rates as necessary, shall be established. The rates  
 18 assigned to each class must reflect the differences in the duties, authorities and responsibilities of  
 19 the class. Data considered as part of compensation analysis may include, but need not be limited to,  
 20 rates paid by other public and private employers for comparable work, Legislative Branch policies  
 21 and financial conditions, unusual recruitment and retention circumstances and other relevant salary  
 22 and economic data.

23 (3) Salary administration.

24 (a) Entrance salary hiring range. An employee may not be hired at less than the current Oregon  
 25 minimum wage. **A prospective employee may not be initially offered compensation based on**  
 26 **current or past compensation.**

27 [(A)] An employee shall [*normally*] be appointed at a step that **complies with the equal pay**  
 28 **and salary history requirements of ORS 652.220 and 659A.357.** [*is in the bottom half of the salary*  
 29 *range for a class.*]

30 [(B) *An appointing authority may hire an applicant at up to the top step in the salary range for*  
 31 *a class if:*]

32 [(i) *The applicant's current or most recent relevant salary and benefits are higher than the Legis-*  
 33 *lative Branch's first step;*]

34 [(ii) *The applicant brings education or experience to the job that will substantially enhance the*  
 35 *employee's immediate contribution; or]*

36 [(iii) *Unusual or difficult recruitment conditions exist.*]

37 [(C) *The appointing authority shall document and retain the reasons for hiring above the bottom*  
 38 *half of the applicable class.*]

39 (b) Part-time employees.

40 (A) A part-time employee may not be hired at less than the current Oregon minimum wage.

41 (B) Any employee hired to work less than full time (40 hours per week) is a part-time employee.  
 42 A part-time employee may be scheduled to work for only one of the following percentages of full-time  
 43 work:

44 (i) 20 percent;

45 (ii) 25 percent;



- 1 (iii) 40 percent;
- 2 (iv) 50 percent;
- 3 (v) 60 percent;
- 4 (vi) 75 percent;
- 5 (vii) 80 percent;
- 6 (viii) 90 percent; or
- 7 (ix) 95 percent.

8 (c) Hiring bonus. With the approval of the agency head or parliamentarian, a lump sum payment  
9 may be given to an employee at the time of hiring, promotion or lateral transfer when there is a  
10 difficult recruitment situation and the payment is needed in order to fill the position. Documentation  
11 of the specifics of the payment must be retained in the recruitment file.

12 (d) Moving expenses. An appointing authority may reimburse actual moving expenses for a  
13 newly hired employee, not to exceed a total of \$5,000. A condition of moving expense reimbursement  
14 is agreement to repay any moving expense reimbursement in an amount equal to the amount of  
15 moving expenses reimbursed multiplied by the percentage of the 24-month commitment not served  
16 by the employee. The employee is not responsible for repayment of moving expense reimbursement  
17 if the employee is terminated at the discretion of the appointing authority under terms of at-will  
18 employment.

19 (e) Branch-wide changes to compensation plan. The presiding officers may, at such times as the  
20 presiding officers deem appropriate and subject to the availability of resources, adjust the compen-  
21 sation plan. Adjustments may be made in each step of each salary range and may not result in em-  
22 ployee movement from one step to another. All employees who are on step are eligible for  
23 adjustment of steps. Employees that are off step will receive a salary adjustment only at the request  
24 of the appointing authority via personnel action.

25 (f) Introductory period.

26 (A) During an introductory period, an employee is trained and oriented to the employee's posi-  
27 tion in the Legislative Branch. In general, an employee is not eligible for a raise or promotion  
28 during an introductory period. An introductory period lasts for six months but may be extended by  
29 the appointing authority.

30 (B) After completion of an introductory period, an appointing authority shall review the per-  
31 formance of an employee and may authorize a minimum one-step salary increase within the  
32 employee's salary range if the increase would not cause the employee's salary to exceed the maxi-  
33 mum rate for the range. Any step increase awarded upon the completion of an employee's intro-  
34 ductory period is entirely at the discretion of the appointing authority. If granted, the increase  
35 becomes effective on the first day of the month following successful completion of the introductory  
36 period. The salary eligibility date is one year after the employee's most recent increase.

37 (g) Annual merit increase.

38 (A) The appointing authority of a limited duration status employee or an employee in a contin-  
39 uing status position may grant, postpone or deny an annual merit increase to the employee on the  
40 employee's salary eligibility date if the employee's base rate of pay does not equal or exceed the  
41 maximum rate for the employee's salary range. If awarded, an annual merit increase is one step.

42 (B) At any time during the year following the postponement or denial of an annual merit in-  
43 crease, the appointing authority may grant the increase. Withholding of an annual merit increase  
44 does not change an employee's salary eligibility date.

45 (C) For each period of leave without pay that is in excess of 15 consecutive calendar days, the

1 employee's recognized service date shall be permanently adjusted by adding to the salary eligibility  
2 date the number of calendar days absent, thereby making the eligibility date later than it would  
3 have been if leave without pay had not been taken. This subsection does not apply to unpaid leave  
4 authorized under LBPR 15.

5 (h) Promotional increases.

6 (A) Upon promotion, an employee may receive an increase in pay equivalent to one step, unless  
7 additional steps are required to compensate the employee at the first step of the classification to  
8 which the employee is promoted.

9 (B) Under unusual circumstances and after consultation with the Human Resources Director,  
10 an employee may be offered an increase in pay beyond the first step of the new range. Unusual  
11 circumstances include, but are not limited to, the employee's education or experience that will sub-  
12 stantially enhance the employee's immediate contribution, and the existence of documented unusual  
13 or difficult recruitment conditions. Such an increase may not cause the employee's new base rate  
14 of pay, excluding differentials, to exceed the maximum rate of pay for the higher-level classification.  
15 The appointing authority shall inform the Human Resources Director of the increase and document  
16 and retain the reasons for granting the increase.

17 (C) An employee who is promoted may receive a step increase following the promotional intro-  
18 ductory period. The salary eligibility date is one year after the increase.

19 (i) Transfer. When an employee transfers from one position to another position in the same  
20 classification or a classification having the same salary range, the employee's base rate of pay re-  
21 mains the same. The employee's status and salary eligibility date are not affected.

22 (j) Reclassification.

23 (A) Upward.

24 (i) Except as described below, when an employee's position is reclassified to a higher classi-  
25 fication, the employee may receive an increase from the employee's base rate of pay to a rate in the  
26 salary range to which the employee is reclassified. The employee's status is not affected. The  
27 employee's salary eligibility date is not affected by the reclassification.

28 (ii) Under unusual circumstances, an appointing authority may grant an additional step upon  
29 upward reclassification. Unusual circumstances include, but are not limited to, an employee's  
30 scheduled salary eligibility date closely following the effective date of the upward reclassification,  
31 or the employee having received a differential for a substantial duration that will no longer continue  
32 after the upward reclassification. Such an increase may not cause the employee's new base rate of  
33 pay to exceed the maximum rate of the higher-level classification. The appointing authority shall  
34 report the increase to the Human Resources Director and document and retain the reasons for  
35 granting such an increase.

36 (B) Downward. When an employee's position is reclassified to a lower classification, the  
37 employee's base rate of pay and status are not affected. If the employee's base rate of pay is higher  
38 than the maximum rate of pay for the class to which the employee is reclassified, the employee shall  
39 be red-circled. If the employee's base rate of pay is lower than the maximum rate for the class to  
40 which the employee is reclassified, the employee's salary eligibility date is not affected.

41 (k) Demotion.

42 (A) Voluntary demotion.

43 (i) When a regular status employee or a limited duration status employee requests and is  
44 granted demotion to a classification having a lower salary range, the employee's base rate of pay  
45 shall be decreased to a rate within the salary range of the lower classification. The employee's sal-

1 ary eligibility date shall not be affected. However, if the employee's base rate of pay is above the  
2 maximum rate for the lower salary range, the employee's base rate of pay shall be decreased to the  
3 maximum rate of the lower salary range, and the month and day of the employee's salary eligibility  
4 date shall be maintained. The employee's status is not affected.

5 (ii) When an employee who has been promoted and is on a promotional introductory period re-  
6 quests and is granted demotion back to the employee's prior classification, the appointing authority  
7 shall reduce the employee's base rate of pay to the step in the salary range that the employee was  
8 at prior to promotion. The month and day of the employee's prior salary eligibility date shall be  
9 restored and the employee shall receive the annual increase the employee would have otherwise  
10 received, if any, but for the promotion. The employee's status returns to what it was prior to pro-  
11 motion.

12 (iii) When an employee in an initial introductory period, or a limited duration status employee  
13 who has been employed for less than one year, requests demotion to a classification having a lower  
14 salary range, the appointing authority shall adjust the employee's base rate of pay, not including  
15 differentials, to the lower salary range and may adjust the employee's base rate of pay to any rate  
16 of pay within that salary range that is equal to or lower than the employee's base rate of pay prior  
17 to demotion. The employee's salary eligibility date is not affected, provided the employee's base rate  
18 of pay does not equal the maximum rate of the lower salary range. The employee's status is not af-  
19 fected.

20 (B) Involuntary demotion. When an employee is involuntarily demoted, the appointing authority  
21 shall adjust the employee's salary range to the salary range for the position to which the employee  
22 is demoted and may adjust the employee's base rate of pay to any step within that salary range. The  
23 employee's status is not affected. The employee's salary eligibility date is not affected provided the  
24 employee's base rate of pay does not equal the maximum rate within the lower salary range.

25 (L) Red-circled employees. The base rate of pay of an employee who becomes red-circled may  
26 not be increased until the salary amount being paid is within the salary range established for the  
27 position. **An employee with a red-circled status is not considered to have received a reduction**  
28 **in the employee's level of compensation for purposes of complying with the equal pay pro-**  
29 **visions under ORS 652.220.**

30 (m) Rehire. Upon rehire, an employee's base rate of pay, not including differentials, shall be  
31 determined by the appointing authority in accordance with this subsection.

32 (n) Special salary adjustments.

33 (A) Recognition.

34 (i) An agency head or parliamentarian may grant a one-step special salary adjustment, up to the  
35 salary range maximum, to any employee who is not in a temporary or limited duration status posi-  
36 tion, who has completed six months of employment and, if applicable, who has completed six months  
37 of the current introductory period.

38 (ii) A special salary adjustment is to be reserved for truly exemplary performance or for  
39 uniquely compelling circumstances. An agency head or parliamentarian who wishes to grant a spe-  
40 cial salary adjustment to an employee must submit, for inclusion in the employee's official personnel  
41 file, written justification that clearly demonstrates how this expenditure is in the best interest of the  
42 Legislative Branch.

43 (iii) An employee may receive no more than one recognition adjustment in any 12-month period.  
44 Such an adjustment does not affect an employee's salary eligibility date.

45 (iv) An agency head or parliamentarian may grant a special recognition bonus for truly

1 exemplary performance or under uniquely compelling circumstances. An employee may receive only  
2 one special recognition bonus in any 12-month period and may not receive a special recognition  
3 bonus in the same 12-month period in which the employee received a special salary adjustment under  
4 this rule.

5 (B) Retention.

6 (i) An appointing authority may grant a special salary adjustment up to the maximum of the  
7 employee's salary range to retain any employee who is not in a temporary or limited duration status  
8 position and who holds a mission-critical position. The employee must present to the appointing  
9 authority a bona fide employment offer that does not originate from the Legislative Branch. The  
10 employee may be required by the agency head or parliamentarian to sign a legally binding agree-  
11 ment not to resign from the Legislative Branch for up to one year from the date of the adjustment.

12 (ii) The appointing authority must produce a report with written justification defining the terms  
13 of the employee's external employment offer and demonstrating the mission critical nature of the  
14 position held by the employee for whom a special salary adjustment is to be granted. This report,  
15 along with the signed agreement to remain, if any, shall be placed in the employee's official per-  
16 sonnel file.

17 (iii) An employee may receive no more than one retention adjustment in any salary range. An  
18 adjustment does not affect an employee's salary eligibility date.

19 (4) Compensation plan changes. Changes in the compensation plan are effective on the date  
20 specified by the presiding officers. All compensation plan changes are subject to availability of  
21 funding.

22 (5) Partial pay period. If an employee works less than a full calendar month in a pay period due  
23 to hire, termination or leave without pay, the employee's pay for that month shall be computed on  
24 a prorated basis using the number of available work hours, based on the employee's schedule, in that  
25 month.

26 (6) Partial day absences. An employee who is not eligible for overtime must use accrued leave  
27 for partial day absences. If the employee does not have sufficient appropriate paid leave accrued to  
28 cover the absence, the appointing authority may not reduce the employee's salary for that portion  
29 of the partial day absence not covered by paid leave.

30 (7) Overtime.

31 (a) Authorization. Overtime-eligible employees are eligible for overtime when:

32 (A) Time worked is in excess of 40 hours in one workweek; or

33 (B) Time worked in a single workday exceeds 12 hours. In such a case, overtime is calculated  
34 and paid only for the time worked in excess of 12 hours in any one workday or in excess of 40 hours  
35 worked in one workweek.

36 (b) Unauthorized overtime. An overtime-eligible employee who performs overtime work without  
37 authorization from the employee's supervisor may be subject to discipline.

38 (c) Volunteering. An appointing authority may not allow an employee who is overtime- eligible  
39 and who has worked 40 hours in a workweek to perform work that is the same or similar to the  
40 employee's regularly assigned duties on a volunteer basis. Such voluntary work performed by an  
41 overtime-eligible employee during a workweek in which the employee has worked 40 hours is con-  
42 sidered time worked for purposes of computing overtime.

43 (8) Eligibility. All legislative agencies and parliamentary offices, other than legislative librarian  
44 positions, are exempt from the Fair Labor Standards Act (FLSA). Some positions are treated under  
45 these rules as overtime eligible, as determined using FLSA criteria. The employees in these positions

1 are eligible for overtime.

2 (9) Recording and compensation.

3 (a) In the case of overtime-eligible employees, all time worked must be recorded on the  
4 employee's timesheet. Overtime is compensated at the rate of one and one-half times the employee's  
5 regular hourly rate of pay, as defined by the Bureau of Labor and Industries, at the time the over-  
6 time is worked. For the purpose of calculating overtime, accrued paid leave that is used is not  
7 considered as time worked, but a paid holiday that is taken off is considered as time worked.

8 (b) An agency head or parliamentarian may elect to compensate overtime-eligible employees by  
9 cash payment or by compensatory time. An employee may accrue a maximum of 240 hours of  
10 compensatory time. An employee who has accrued 240 hours of compensatory time and who works  
11 overtime must receive cash payment for the overtime worked in excess of 240 hours.

12 (10) Use of compensatory time.

13 (a) In the case of overtime-eligible employees, compensatory time is available for use any time  
14 following the workday in which it is earned. The use of compensatory time may be requested by the  
15 employee or may be required by the appointing authority.

16 (b) The use of compensatory time must be scheduled in advance.

17 (c) A supervisor shall grant an overtime-eligible employee's request to use accrued compensatory  
18 time unless doing so would unduly disrupt business operations.

19 (d) Compensatory time must be used within 18 months. After 18 months, unused compensatory  
20 time will be paid to the employee at the employee's current rate of pay.

21 (11) Compensation and compensatory time at termination. In the case of overtime-eligible em-  
22 ployees, **upon termination of employment, payments for unused compensatory time earned**  
23 **shall be paid at the average regular rate of compensation received by the employee during**  
24 **the last three years of the employee's employment or at the employee's final regular rate**  
25 **of compensation, whichever is higher** [*an employee who terminates employment shall be paid for*  
26 *accrued compensatory time at the employee's regular hourly rate at termination*].

27 (12) Compensation and compensatory time upon transfer or promotion.

28 (a) When an overtime-eligible employee transfers or is promoted to a different position in the  
29 Legislative Branch, the appointing authority for the position being vacated shall pay the employee  
30 for all accrued compensatory time earned prior to the effective date of transfer or promotion at the  
31 regular hourly pay rate the employee was receiving on the workday prior to transfer or promotion.

32 (b) The appointing authority for the position being filled may, prior to the effective date of the  
33 transfer or promotion, agree in writing to allow the employee to retain some or all of the employee's  
34 accrued compensatory time, which then becomes the liability of the legislative unit or agency to  
35 which the employee is transferring or being promoted.

36 (13) Compensation and compensatory time before termination. An appointing authority may  
37 elect at any time to pay an overtime-eligible employee in cash for all or a portion of compensatory  
38 time after such time has been accrued. If an employee is paid for accrued compensatory time before  
39 termination, payment shall be made at the employee's regular hourly pay rate at the time of pay-  
40 ment.

41 (14) Second jobs. When an employee applies for a second job within the Legislative Branch:

42 (a) If the employee is working full-time for the first legislative agency or parliamentary office  
43 and if the second Legislative Branch position has the same or similar job duties, the second legis-  
44 lative agency or parliamentary office shall be responsible for any overtime pay liability. However,  
45 the second agency or office may refuse to hire the employee because of potential overtime pay li-

1 ability.

2 (b) If the employee is working part time for the first legislative agency or parliamentary office  
3 and if the second legislative agency or parliamentary office job has the same or similar duties, the  
4 two entities shall mutually agree on the employee's overtime eligibility status and any overtime pay  
5 obligation. Unless both entities agree otherwise, the legislative agency or parliamentary office em-  
6 ploying the employee at the time the employee exceeds 40 hours in one workweek shall pay any  
7 overtime for which the employee is eligible.

8 *[(c) If the second legislative job is in a different capacity than the employee's regular job and is  
9 occasional or sporadic, the second legislative agency or parliamentary office may hire the employee  
10 without overtime pay liability. As used in this paragraph:]*

11 *[(A) "Different capacity" means employment involving duties that do not fall within the same gen-  
12 eral occupational category as the employee's regularly assigned duties.]*

13 *[(B) "Occasional or sporadic" means infrequent, irregular or occurring in scattered instances.]*

14 (15) Separation of powers.

15 (a) Unlike the United States Constitution, which establishes separation of powers only by im-  
16 plication, the Oregon Constitution contains a specific requirement dividing state government into  
17 three separate branches: the Legislative, the Executive and the Judicial. The Oregon Constitution  
18 further provides that no person charged with official duties under one of these branches shall ex-  
19 ercise any of the functions of another, except as otherwise expressly provided in the Constitution.  
20 See Article III, section 1, Oregon Constitution.

21 (b) Article III, section 1, prohibits:

22 (A) Employees of one branch from undertaking a duty or function that belongs in another  
23 branch;

24 (B) Employees of one branch, in performing a duty appropriate to that branch, from doing so in  
25 a way that unduly interferes with the operation of another branch's function; and

26 (C) The same person from simultaneously performing duties as an affiliate of more than one  
27 branch.

28 (c) Due to Article III, section 1, employees may not work for more than one branch of govern-  
29 ment simultaneously.

30 (16) Differentials.

31 (a) Shift differential.

32 (A) Shift differential applies to any employee who is in an overtime-eligible position and whose  
33 regularly scheduled workday falls entirely or partially within the hours of 6:00 p.m. and 6:00 a.m.  
34 or on Saturday or Sunday.

35 *[(B) The amount of shift differential must be consistent with differentials paid in other branches  
36 of state government. Shift differential is applied to the actual time worked between the hours of 6:00  
37 p.m. and 6:00 a.m., or on Saturday or Sunday, and is considered in the calculation of overtime pay.]*

38 *[(C) Shift differential may not be computed at the rate of one and one-half the employee's regular  
39 rate of pay for a shift occurring on a holiday.]*

40 *[(D) Shift differential is not applied to base pay rates for computation of pay during leave with  
41 pay.]*

42 *[(E)]* (B) An appointing authority and employee may mutually agree, in advance and in writing,  
43 to waive the payment of shift differential. A waiver is possible only when an employee requests to  
44 work a schedule that would otherwise qualify for payment and the approval is based on the  
45 employee's personal preference rather than business need.

1 (b) Work out of class.

2 (A) Eligibility and rate. Except as described below, an employee assigned in writing to perform  
3 duties of an existing, higher-level classification for a period of 10 or more consecutive work days  
4 must be compensated for the performance of such duties. Compensation is generally a temporary  
5 one-step salary increase for the period during which the duties are performed. Under unusual cir-  
6 cumstances, such as when the employee assumes the full responsibility of a higher level class and  
7 a one-step increase is not sufficient to compensate the employee at the minimum rate of the higher  
8 level class, and after consultation with the Human Resources Director, an appointing authority may  
9 grant more than a one-step increase. The appointing authority shall document and retain the reasons  
10 for granting more than a one-step increase. The pay rate of an employee receiving work out of class  
11 may not exceed the top step of the higher level classification.

12 (B) Duration. Work out of class duties may be assigned for a specified period not to exceed one  
13 year. An appointing authority may extend a work out of class assignment beyond one year under  
14 unusual circumstances.

15 (C) Waiver. When an employee is assigned higher-level duties that would otherwise qualify for  
16 work out of class, the employee and appointing authority may mutually agree to waive the work out  
17 of class when the purpose of the assignment is to give the employee the opportunity to learn a  
18 higher-level job skill.

19 (c) Lead differential.

20 (A) An employee may receive a one-step lead differential when an appointing authority assigns  
21 lead work or team leader duties to that employee for a period of 10 or more consecutive work days.  
22 The appointing authority shall consult with the Human Resources Director prior to authorizing such  
23 payment.

24 (B) Lead differential does not apply to employees whose classifications normally include lead  
25 work or team leader duties, or to voluntary training or developmental assignments.

26 (C) Payment of a lead differential must be designated for a specific lead work or team leader  
27 assignment, project or time period as determined by the appointing authority. The employee must  
28 be paid for the full period during which the duties are assigned.

29 (D) When an employee who is receiving a lead differential is temporarily assigned to perform  
30 work that qualifies for a work out of class differential, the appointing authority may continue the  
31 lead differential for the duration of the work out of class assignment for up to one year.

32 (E) While this differential is normally one step, the appointing authority may determine that two  
33 steps are warranted when the lead work assignment is significantly larger as a result of factors in-  
34 cluding, but not limited to:

35 (i) The number of employees led.

36 (ii) The number of work units led.

37 (iii) The complexity of, or differences between, the work unit or units led.

38 (iv) The number of geographic locations in which the employee is leading staff.

39 (F) The appointing authority shall document and retain the reasons for granting a two-step lead  
40 differential.

41 (G) As used in this paragraph, "lead work or team leader duties" includes duties where, on a  
42 recurring or daily basis, the employee has been assigned the responsibility to perform substantially  
43 all of the following functions:

44 (i) Training or orienting new employees.

45 (ii) Assigning and reassigning tasks to other employees.

- 1 (iii) Giving direction to other employees concerning day-to-day work procedures.
- 2 (iv) Communicating established standards of performance to affected employees.
- 3 (v) Reviewing the work of other employees to ensure conformance to established standards.
- 4 (vi) Providing informal assessment of employees' performance to the supervisor.
- 5 (d) On-call differential.

6 (A) When an overtime-eligible employee is required to work times other than the employee's  
7 regular, flexible or irregular work schedule in order to perform work before the employee's next  
8 regularly scheduled work day, the employee must be compensated with an on-call duty differential.

9 (B) An overtime-eligible employee who is on-call and available for work need not be subject to  
10 restrictions that prevent the employee from using on-call time for the employee's own purposes, but  
11 must be available, within 60 minutes of being requested, to consult by telephone or to report  
12 promptly for work. On-call duty differential pay may not be applied to base pay rates for compu-  
13 tation of pay during leave with pay.

14 (C) An on-call employee who returns to work when requested shall be paid the on-call differen-  
15 tial for a minimum of two hours at the rate of time and one-half. Additional time worked is paid on  
16 an hourly basis for each hour or major portion of an hour worked at the rate of time and one-half.  
17 As used in this subparagraph, "major portion of an hour" means 30 minutes or more.

18 (D) On-call duty differential does not apply to employees working in overtime situations or  
19 whose flexible or irregular work schedule falls between 5 p.m. and 8 a.m. or on weekends.

20 (e) The presiding officers may establish any other differential, in addition to those listed above,  
21 determined by the presiding officers to be necessary.

22 (17) Call back.

23 (a) An overtime-eligible employee who has been released from duty and who must return to the  
24 work site to perform work before the employee's next regularly scheduled work day shall be com-  
25 pensated for a minimum of two hours of work. The work may be performed:

26 (A) At the employee's work site.

27 (B) At a work site other than the employee's official work site.

28 (b) Time worked that is a continuation of or immediately preceding an overtime-eligible  
29 employee's normal work schedule, that is scheduled in advance or that does not require the em-  
30 ployee to physically travel to a work site does not constitute call back. An employee may be called  
31 back only by the appointing authority or by the employee's immediate supervisor.

32 (c) A full-time overtime-eligible employee shall be compensated for call back time in excess of  
33 40 hours in a work week in accordance with subsections (7) to (9) of this rule. A part-time  
34 overtime-eligible employee shall be compensated for call back time at straight time and shall be paid  
35 at the hourly rate equivalent to the employee's current salary. If a part-time employee's call back  
36 time, when combined with the employee's regular hours worked in a work week, exceeds 40 hours,  
37 the work in excess of 40 hours shall be compensated in accordance with subsections (7) to (9) of this  
38 rule.

39 **(18) Equal-Pay Analysis. The Legislative Branch shall perform equal-pay analyses, as de-**  
40 **defined in ORS 652.210, at the times and with the frequency to ensure compliance with ORS**  
41 **652.220 and other laws that prohibit wage discrimination. Notwithstanding any other pro-**  
42 **vision of this rule, the Legislative Branch shall pay wages in conformance with the most**  
43 **recent equal-pay analysis applicable to the position for which the wages are being paid.**

44  
45 Legislative Branch Personnel Rule 6 is amended as follows:



**Rule 6. Recruitment and Selection.**

APPLICABILITY: This rule applies to all legislative agencies and parliamentary offices, except that it does not apply to limited duration status employees and temporary status employees.

(1) Purpose. The purpose of the recruitment and selection process is to ensure that all positions are filled by qualified, competent individuals who are well-suited to do the work for which they are employed. Individuals selected by any of the methods specified in these rules must meet the minimum qualifications for the class of work to which an appointment is made.

(2) Methods for recruiting and filling vacancies.

(a) Upon deciding to fill a vacancy, the appointing authority shall notify Employee Services of the action to be taken.

(b) An appointing authority may fill a position through any of the following methods:

(A) Open competitive recruitment, in which any Legislative Branch employee or member of the public may apply for the position.

(B) Legislative Branch limited internal recruitment, in which only current Legislative Branch employees, including limited duration status employees and temporary status employees, may apply for the position.

(C) Direct appointment, in which the appointing authority may appoint an applicant to a vacant position based on the applicant meeting the minimum qualifications established for the position.

(c) Underfill appointments may occur for the following reasons:

(A) Developmental. After consultation with the Human Resources Director, an appointing authority may underfill a position for developmental reasons, such as gaining the necessary length of experience by time on the job. Recruitment for the underfill opportunity shall be conducted in accordance with this rule. The length of the underfill and requirements to satisfactorily complete the developmental experience shall be documented prior to the appointment. When the employee, as determined by the appointing authority, satisfactorily completes the underfill requirements, the employee shall be reclassified to the level required for the position and may receive an increase in pay in accordance with LBPR 4.

(B) Administrative need. An appointing authority may underfill a position if, due to organizational changes, the budgeted level of a position is higher than organizational needs require. The position may be filled at the lower level classification using any method listed in this rule.

(3) Job announcements.

(a) Recruitment announcements are required for all job vacancies being filled by open competitive or limited internal recruiting methods.

(b) The required content of a recruitment announcement may be defined or refined beyond the required content as expressed in a classification specification or position description to more fully reflect the specific requirements of a position.

(c) An announcement issued for a job vacancy must include the following:

(A) Class title;

(B) Salary range;

(C) Location;

(D) Type of recruitment;

(E) Nature of the assigned work;

(F) Qualifications required of the applicant;

(G) Manner in which application is to be made;

(H) Notification that a criminal records check may be part of the selection process, only when

1 a criminal records check is part of the selection process; and (I) Any special working conditions that  
2 apply.

3 (d) Appointing authorities shall ensure that announcements issued for job vacancies are posted  
4 in a manner accessible to all employees. Announcements for vacancies being filled through open  
5 competitive recruitment must be posted in a manner accessible to the public.

6 (e) Announcements issued for job vacancies being filled through open competitive recruitment  
7 must be posted and applications accepted for a minimum of 14 calendar days. A limited internal  
8 recruitment announcement need only be posted for a minimum of seven days.

9 (4) Selection process for open competitive and limited internal recruitments.

10 (a) When an announcement is issued for an open competitive or limited internal recruitment as  
11 described in subsection (2)(b) of this rule, the appointing authority is responsible for reviewing and  
12 selecting applicants in compliance with Legislative Branch Personnel Rules and procedures.

13 (b) Employee Services is responsible for determining which applicants meet the minimum quali-  
14 fications for a position in Legislative Administration. Applications for positions in other legislative  
15 agencies or parliamentary offices shall be forwarded to those agencies or offices for evaluation.  
16 Applications for positions in Information Services may be evaluated by Information Services profes-  
17 sionals.

18 (c) Evaluation of all applicants must be based on the qualifications of the applicant and the  
19 applicant's responses to supplemental questions, if any, in the announcement.

20 (d) All applicants who are not selected shall be notified by Employee Services no later than 10  
21 business days after the selected applicant's acceptance of the position. In the event that the decision  
22 is made not to fill a position for which recruitment has been announced, Employee Services shall  
23 notify the applicants no later than 10 business days after the date on which such a decision was  
24 made.

25 (e) Upon written request of a veteran applicant, Employee Services shall provide to the veteran  
26 applicant the reason(s) that the applicant was not selected.

27 (5) Veterans' Preference.

28 (a) Consistent with ORS 408.230, veterans' preference will be applied when one or more qualified  
29 disabled or nondisabled veterans apply for a vacancy for which the recruitment method used by the  
30 appointing authority is a competitive process involving application screening or scoring, interviews  
31 or any other form of examination.

32 **(b) When an interview of a veteran applicant is a component of the selection process for**  
33 **a position to be filled by an employee, the interviews shall be conducted in accordance with**  
34 **ORS 408.237.**

35 (6) Documentation of hiring decision. The appointing authority shall, in accordance with the  
36 Legislative Branch document retention schedule, retain all selection and evaluation materials either  
37 electronically or in hard copy, including:

38 (a) Application screening summaries;

39 (b) The screening criteria used;

40 (c) All applications received;

41 (d) Names of applicants interviewed;

42 (e) Interview questions used;

43 (f) Interview notes;

44 (g) Notes from reference checks;

45 (h) The name of the applicant selected; and

1 (i) Other information as required by Legislative Branch policy statements.

2 (7) Confirmation and acceptance of appointment.

3 (a) When a position is filled, the appointing authority shall notify Employee Services of the ap-  
4 pointment by completing a personnel action form and forwarding the form and the offer letter, once  
5 accepted and signed by the applicant, to Employee Services.

6 (b) Employee Services shall confirm in writing the offer of employment to the selected applicant.  
7 An applicant who reports for work at the scheduled time and location shall be considered to have  
8 accepted the terms and conditions offered. An applicant who fails to report for work at the sched-  
9 uled time and location declines the appointment.

10 (8) Introductory period.

11 (a) An introductory period is the period following the initial appointment to a position in the  
12 Legislative Branch, a change in positions within the Legislative Branch or an appointment to a po-  
13 sition in the Legislative Branch that follows a break in legislative service of at least 12 months'  
14 duration.

15 (b) During an introductory period, an employee is trained and oriented to the employee's posi-  
16 tion in the Legislative Branch. In general, an employee is not eligible for a raise or promotion  
17 during an introductory period. An introductory period lasts for six months but may be extended by  
18 the appointing authority.

19 (c) Employment with the Legislative Branch remains at-will during and after completion of an  
20 introductory period. An employee may be terminated without cause at the discretion of the ap-  
21 pointing authority or designee at any time.

22 (d) If an employee changes appointing authorities as a result of a promotion, and the new ap-  
23 pointing authority determines during the introductory period that the employee should be removed  
24 from the new position, at the discretion of the previous appointing authority the employee may re-  
25 turn to the previous appointing authority in a position in the same class as the position in which  
26 the employee was previously employed, if available.

27  
28 Legislative Branch Personnel Rule 15 is amended as follows:

29 **Rule 15. Family and Medical Leave.**

30 **APPLICABILITY:** This rule applies to all employees of the Legislative Branch. This rule does  
31 not apply to members of the Legislative Assembly, except as provided in subsection (9)(b) of this  
32 rule.

33 (1) FMLA and OFLA information. Information about the requirements for eligibility and the  
34 length of leave authorized under the federal Family and Medical Leave Act (FMLA) and Oregon  
35 Family Leave Act (OFLA) is available from Employee Services. Employees are encouraged to con-  
36 tact Employee Services for detailed information and for assistance in requesting family and medical  
37 leave. Detailed information about FMLA and OFLA may also be obtained from the Bureau of Labor  
38 and Industries ([www.oregon.gov/BOLI](http://www.oregon.gov/BOLI)).

39 (2) Policy. It is the policy of the Legislative Branch to provide leave to its employees so that  
40 employees can meet family health and parental obligations and address their own serious health  
41 conditions while maintaining a durable link to their jobs. The Legislative Branch provides leave to  
42 employees in accordance with FMLA and OFLA. FMLA and OFLA leave for eligible employees shall  
43 be granted if requested. Federal and state law prohibit retaliating against an employee with respect  
44 to hiring or any other term or condition of employment because the employee asked about, requested  
45 or used any type of FMLA or OFLA leave. Application of the provisions of FMLA and OFLA may

1 vary based on individual circumstances. The applicability of federal or state law is considered on a  
2 case-by-case basis.

3 (3) Notice to employee. Each agency head or parliamentarian shall ensure that their employees  
4 are aware of, and are granted, entitlements for taking family and medical leave, in accordance with  
5 provisions of FMLA and OFLA. Employee Services shall similarly ensure that leadership office staff,  
6 caucus office staff and personal staff are aware of, and are granted, entitlements for taking family  
7 and medical leave, in accordance with the provisions of FMLA and OFLA. An agency head,  
8 parliamentarian or designee shall inform employees **and applicants** about the provisions of FMLA  
9 and OFLA by actions that include, but are not limited to:

10 (a) Posting official notices in the workplace in accordance with the provisions of FMLA and  
11 OFLA;

12 (b) Including information about family and medical leave in new employee orientation materials;  
13 and

14 (c) Posting information about family and medical leave entitlements under FMLA and OFLA on  
15 the Legislative Intranet.

16 (4) Type of Family and Medical Leave. When an employee requests family and medical leave,  
17 Employee Services shall compare the leave provisions of FMLA and OFLA to determine which Act  
18 is the most generous. FMLA law controls unless OFLA provides more generous leave provisions for  
19 the employee. In all cases, Employee Services shall give the employee the benefit of the more gen-  
20 erous leave provisions. When leave is authorized under FMLA and OFLA, the leave shall be desig-  
21 nated as FMLA-qualifying and shall simultaneously exhaust both FMLA and OFLA leave  
22 entitlement.

23 (5) Use of accrued leave. The use of accrued leave is not required while on approved leave under  
24 FMLA or OFLA. The employee may elect the type of accrued leave to be used during family or  
25 medical leave. Although an employee may not be required to use accrued compensatory time while  
26 on FMLA or OFLA leave, the employee may choose to use accrued compensatory time while on  
27 FMLA or OFLA leave. However, the use of compensatory time may not be counted against the  
28 employee's 12-week leave entitlement under FMLA or OFLA.

29 (6) Family and Medical Leave and workers' compensation.

30 (a) An employee's 12-week leave entitlement under FMLA or OFLA runs concurrently with any  
31 employee absence that results from a workers' compensation claim.

32 (b) **For purposes of this rule, family leave is leave that is taken for the purposes de-**  
33 **scribed in ORS 659A.159, but does not include leave taken by an employee because of a**  
34 **compensable injury or disabling compensable injury under ORS chapter 656.**

35 (7) Calculation of leave. *[For purposes of determining an employee's remaining FMLA and OFLA*  
36 *leave entitlement, a rolling-backward period shall be used. As used in this subsection, "rolling-*  
37 *backward period" means a rolling 12-month period measured backward from the date on which an*  
38 *employee proposes to use leave under FMLA and OFLA.]* **An employee's FMLA and OFLA leave**  
39 **entitlement is determined on a fixed calendar year basis under which, annually on January**  
40 **1, an eligible employee may use up to 12 weeks of FMLA/OFLA leave for qualifying conditions**  
41 **through December 31 of the same year. No unused leave may be carried forward to another**  
42 **calendar year.** For example, at the time the employee takes leave, if eight weeks have been taken  
43 *[in the past 12 months]* **since January 1, an additional four weeks of leave may be taken by De-**  
44 **cember 31 of that same year, but no leave may be carried forward to the next calendar**  
45 **year.**

1 (8) Notice to employer. An employee shall provide at least 15 calendar days' notice of a planned  
 2 absence under this rule. When a medical emergency or other unforeseeable event occurs, the em-  
 3 ployee shall contact the appointing authority or designee as soon as practicable, but not later than  
 4 three days from **the** date of the occurrence. The employee may be required to submit certification  
 5 from a medical provider that documents their absence for their own medical treatment or for the  
 6 treatment of qualifying family members. **An employee may not be required to provide a medical  
 7 provider's certification for parental leave or bereavement leave and may not be required to  
 8 bear the cost of obtaining a medical provider's certification.**

9 (9) Process for requesting and receiving Family and Medical Leave.

10 (a) Each agency head and parliamentarian, or their designee, shall develop and administer a  
 11 process for eligible employees to request and receive leave under this rule. Upon receipt of an  
 12 employee's request for leave, the agency head, parliamentarian or designee shall provide the em-  
 13 ployee with a written notice of eligibility that includes:

14 (A) A designation of the FMLA or OFLA entitlements applicable to the request for leave and  
 15 a statement that leave taken counts against the applicable leave entitlements.

16 (B) Applicable medical certification requirements and the consequences for not providing such  
 17 information when requested.

18 (C) Notification that an employee may elect to use accrued leave or may use unpaid leave, de-  
 19 pending on the employee's individual circumstances in accordance with subsections (4) and (5) of  
 20 this rule.

21 (D) Notification that employer health care contributions will continue if the leave has been  
 22 designated as FMLA or OFLA. Employee Services shall advise the employee of the employee's li-  
 23 ability to reimburse the Legislative Branch for health care contributions if the employee fails to  
 24 return from leave, in accordance with the provisions of FMLA or OFLA.

25 (E) An explanation of the employee's return rights in accordance with provisions contained in  
 26 the designated family and medical leave law.

27 (b) If leave is designated as FMLA or OFLA leave, an employee will still be required to pay the  
 28 employee's share of health care contributions.

29 (c) Employee Services shall assist members of the Legislative Assembly, leadership offices and  
 30 caucus offices in complying with the requirements of FMLA and OFLA, including procedures under  
 31 which employees of leadership offices, caucus offices or member offices may request and receive  
 32 FMLA and OFLA leave.

33 (10) Family and Medical Leave Act and Oregon Family Leave Act recordkeeping. Each agency  
 34 head or parliamentarian, or a designee of the agency head or parliamentarian, shall maintain re-  
 35 cords detailing leave taken by employees under and compliance with FMLA and OFLA. Such re-  
 36 cords shall be maintained in compliance with the requirements of applicable state and federal law.

37  
 38 Legislative Branch Personnel Rule 16 is amended as follows:

39 **Rule 16. Paid Sick Leave.**

40 **APPLICABILITY:** This rule applies to all employees of the Legislative Branch. This rule does  
 41 not apply to members of the Legislative Assembly.

42 (1) Monthly accrual.

43 (a) Full-time continuing status positions. An employee in a full-time continuing status position  
 44 accrues sick leave at the rate of eight hours for each full calendar month employed, credited to the  
 45 employee [*on the first day of the calendar month following the month in which*] **when** the leave

1 [was] is earned.

2 (b) Part-time continuing status positions. Sick leave accrual for an employee in a part-time  
3 continuing status position is calculated on a prorated basis, using the number of hours the employee  
4 works in a month, credited to the employee [*on the first day of the calendar month following the*  
5 *month in which*] **when** the leave [was] is earned.

6 (c) Introductory period. During an introductory period, an employee is eligible to accrue and  
7 use sick leave.

8 (d) Temporary status employees. A temporary status employee begins accruing sick leave on the  
9 first day of employment. A temporary status employee accrues sick leave on a part-time or full-time  
10 basis, based on the hours that the employee works.

11 (e) Crediting sick leave. Sick leave is credited to an employee [*on the first day of the calendar*  
12 *month following the calendar month in which*] **when** the leave [was] is earned.

13 (f) Partial month accrual. Sick leave accrual for an employee working less than a full calendar  
14 month in a pay period due to hire, termination or leave without pay is computed using the number  
15 of hours the employee worked in that month.

16 (2) Maximum accumulation. Sick leave accrues without limitation, subject to other policies.

17 (3) Notification.

18 (a) It is an employee's responsibility to notify the employee's immediate supervisor of the need  
19 to use sick leave. If the employee's absence is unanticipated, the employee shall contact the imme-  
20 diate supervisor at the beginning of each missed day's regularly scheduled work time unless other  
21 arrangements have been approved by the supervisor. If the employee's absence is an emergency, the  
22 employee shall notify the supervisor of the need for leave as soon as the employee is able to do so.  
23 If the employee's absence is prescheduled, the employee shall notify the supervisor of the need for  
24 leave as far in advance as possible.

25 (b) In emergency situations, an employee or the employee's representative shall contact the  
26 supervisor as soon as possible during the 24-hour period immediately following the employee's failure  
27 to report to work.

28 **(c) For use of sick leave that is foreseeable, an employee shall provide notice as pre-**  
29 **scribed in paragraph (a) of this subsection. A supervisor or appointing authority may not**  
30 **require notice to be given more than 10 calendar days before the first day of sick leave be-**  
31 **gins.**

32 (4) Holiday during sick leave. If a holiday occurs while an employee is on sick leave, the holiday  
33 is not deducted from the employee's accrued sick leave.

34 (5) Use of accrued sick leave.

35 (a) Availability. Sick leave is available to an employee for use [*on the first day of the calendar*  
36 *month following the month in which*] **when** the leave [was] is earned.

37 (b) Qualifying absence. An employee may use accrued sick leave:

38 (A) For the employee's mental or physical illness, injury or health condition, need for medical  
39 diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for  
40 preventive medical care.

41 (B) For care of a family member with a mental or physical illness, injury or health condition,  
42 care of a family member who needs medical diagnosis, care, or treatment of a mental or physical  
43 illness, injury or health condition or care of a family member who needs preventive medical care.

44 (C) For a purpose specified in ORS 659A.159 or 659A.272.

45 (D) In the event of a public health emergency.

1 (6) Use of other leave. (a) An employee eligible to take FMLA or OFLA leave is entitled to use  
2 accrued paid sick leave, personal leave, vacation leave or any other paid leave for which the em-  
3 ployee qualifies during the period of FMLA or OFLA leave or if OFLA and FMLA leave are ex-  
4 hausted. Accrued paid sick leave does not include disability insurance or disability benefits. (b) Use  
5 of leave without pay. An employee who is absent due to family or medical leave under LBPR 15 shall  
6 be allowed to use leave without pay if the employee so elects. An employee may elect to receive  
7 leave without pay while receiving disability income. A supervisor may require the employee to pro-  
8 vide evidence of such disability benefit.

9 (7) Medical verification.

10 (a) Need to be absent. Under certain circumstances, the appointing authority may require an  
11 employee to submit substantiating evidence for the use of sick leave and request additional infor-  
12 mation pursuant to state and federal law.

13 (b) Ability to return to work. Verification of an employee's ability to return to work with or  
14 without any modification is required from the employee's health care provider whether the absence  
15 was paid or unpaid due to a health or medical event, when:

16 (A) The employee was absent for more than five consecutive workdays as a result of the  
17 employee's own illness or injury; or

18 (B) The employee was hospitalized as an inpatient.

19 (c) **Job limitations.** An appointing authority may require an employee returning from a paid  
20 or unpaid leave of absence due to a health or medical event to provide information about any limi-  
21 tations on the employee's ability to perform the employee's job if the employee did not receive a full  
22 duty work release to return to work. Unless otherwise required by state or federal law, an ap-  
23 pointing authority may modify an employee's work assignment or schedule in response to the stated  
24 limitations for the purpose of meeting operational needs.

25 (d) Parental leave. An employee who is absent for parental leave reasons is not required to  
26 present verification of the ability to return to work.

27 *[(f) Workers' compensation. An employee who is absent as a result of an injury, illness or condition  
28 incurred or aggravated on the job for which a workers' compensation claim has been filed and who  
29 has sought medical treatment for the injury, illness or condition must request reinstatement or reem-  
30 ployment pursuant to ORS 659A.043 or 659A.046.]*

31 *[(f)]* (e) Cost of obtaining certification. In the case of legislative agency or parliamentary office  
32 employees, the agency or office shall reimburse an employee for any out-of-pocket costs incurred in  
33 obtaining medical certification of the need to be absent or ability to return to work. In the case of  
34 all other legislative employees, the Legislative Assembly shall reimburse an employee for any out-  
35 of-pocket cost incurred in obtaining medical certification of the need to be absent or ability to re-  
36 turn to work.

37 (f) **Examinations and inquiries.** An appointing authority may not require that an em-  
38 ployee submit to a medical examination, may not make inquiries of an employee as to  
39 whether the employee has a disability and may not make inquiries of an employee as to the  
40 nature or severity of any disability of the employee, unless the examination or inquiry is  
41 shown to be job-related and consistent with business necessity.

42 (g) **Voluntary examinations and inquiries.**

43 (A) **Notwithstanding paragraph (f) of this subsection, an appointing authority may con-  
44 duct voluntary medical examinations, including voluntary medical histories, that are part of  
45 an employee health program available to employees at the Capitol. An appointing authority**

1 **may make inquiries into the ability of an employee to perform job-related functions.**

2 **(B) Information obtained under subparagraph (A) of this paragraph relating to the med-**  
 3 **ical condition or history of an employee is subject to the same restrictions applicable to in-**  
 4 **formation acquired from medical examinations authorized under ORS 659A.133.**

5 (8) Workers' compensation claims.

6 (a) Reporting requirements.

7 (A) An employee who is injured on the job or becomes ill or develops or aggravates a condition  
 8 because of the job shall immediately report the occurrence to the employee's supervisor.

9 (B) The employee's supervisor shall respond to this report by completing an Accident Incident  
 10 Report form (available in Employee Services) and returning the form to Employee Services.

11 (b) Use of leave. An employee who is absent because of an injury, illness or condition that was  
 12 incurred or aggravated on the job and who is receiving time loss payments for that absence may  
 13 either take leave without pay or prorate the use of accrued sick leave as described in paragraph  
 14 [(c)] (d) of this subsection. An employee may also prorate the use of other available paid leave. Such  
 15 leave may be requested in lieu of sick leave or when sick leave is exhausted, but it may not be  
 16 counted against an employee for the purpose of available OFLA or FMLA leave.

17 (A) An employee who takes leave without pay receives no compensation other than the time loss  
 18 payments authorized by the workers' compensation insurance carrier.

19 (B) An employee who is absent because of an injury, illness or condition that was incurred or  
 20 aggravated on the job and who is not receiving time loss payments for that absence may take leave  
 21 in accordance with this rule.

22 (c) **Reinstatement.**

23 **(A) An employee who is absent as a result of an injury, illness or condition, incurred or**  
 24 **aggravated on the job, for which a workers' compensation claim has been filed, and who has**  
 25 **sought medical treatment for the injury, illness or condition, must request reinstatement**  
 26 **or reemployment pursuant to ORS 659A.043 or 659A.046.**

27 **(B) This subsection is not intended to apply to an employee who incurs a single or in-**  
 28 **termittent absence for a medical appointment or treatment that is related to a compensable**  
 29 **injury, as defined in ORS 656.005, but who is not disabled from performing the duties of the**  
 30 **employee's position or otherwise in a circumstance that requires reinstatement or reem-**  
 31 **ployment under ORS 659A.043 and 659A.046.**

32 [(c)] (d) An employee who chooses to prorate the use of accrued leave shall do so by using, for  
 33 every hour absent, one-third of one accrued leave hour and two-thirds of one hour of leave without  
 34 pay. The amount of leave taken without pay must represent the amount of time loss compensation  
 35 received.

36 (9) Effect of rehire. If, within two years from the employee's date of separation, a former Leg-  
 37 islative Branch employee is hired by the Legislative Branch, the employee's previously accrued and  
 38 unused sick leave shall be restored. PERS retired employees who become rehired after retirement  
 39 do NOT receive restored sick leave.

40 (10) Effect of movement within Legislative Branch. When an employee is transferred, promoted  
 41 or demoted from one appointing authority to another within the Legislative Branch, all of the  
 42 employee's accrued sick leave shall be transferred.

43 (11) Employees hired from a State of Oregon agency. If, within two years of separation, a former  
 44 State of Oregon agency employee is hired by the Legislative Branch, the employee's previously ac-  
 45 crued unused sick leave shall be transferred.



1 (12) Employees hired from an Oregon university or governing board. If an individual who pre-  
2 viously worked for an Oregon university or governing board as defined by ORS 352.054 is hired into  
3 a Legislative Branch position, the employee's previously accrued unused sick leave may not be  
4 transferred.

5 (13) Sick leave upon termination.

6 (a) There is no compensation for unused sick leave upon termination of employment. Unused  
7 sick leave is placed in the State's accrual clearinghouse for two years following the employee's  
8 termination of employment, available to be restored to the employee if the employee is reinstated  
9 within those two years.

10 (b) The Legislative Branch shall report unused sick leave to the Public Employees Retirement  
11 System (PERS). According to statute, sick leave, once reported by the employer to PERS for retire-  
12 ment purposes, is considered used and is therefore not subsequently available for restoration.

13 (14) Use of donated vacation leave for sick leave purposes. An employee may receive paid sick  
14 leave that has been converted from vacation leave donated by other employees. An employee re-  
15 ceiving donated leave may use the leave only in accordance with this rule.

16 *[(15) Operative date. This rule becomes operative January 1, 2016.]*

17  
18 Legislative Branch Personnel Rule 27 is amended as follows:

19 **Rule 27. Harassment-Free Workplace.**

20 (1) Policy.

21 (a) The Legislative Branch is committed to providing a safe and respectful workplace that is free  
22 of harassment. Members of the Legislative Assembly and all Legislative Branch employees are ex-  
23 pected to conduct themselves in a manner that is free of harassment and to discourage all  
24 harassment in the workplace and at events, professional meetings, seminars or any events at which  
25 legislative business is conducted.

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

30 (2) Terms. As used in this rule:

31 (a) "Employees" includes legislative interns and volunteers performing services for the Legisla-  
32 tive Branch.

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

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

38 (d) "Protected class" means a class of individuals defined by a characteristic that may not be  
39 targeted for discrimination, including age, race, sex, sexual orientation, gender, gender identifica-  
40 tion, national origin, disability and religion.

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

44 (f) "Sexual harassment" means unwelcome conduct in the form of a sexual advance, sexual  
45 comment, request for sexual favors, unwanted or offensive touching or physical contact of a sexual

1 nature, unwanted closeness, impeding or blocking movement, sexual gesture, sexual innuendo, sexual  
2 joke, sexually charged language, intimate inquiry, persistent unwanted courting, sexist insult, gender  
3 stereotype, or other verbal or physical conduct of a sexual nature, if:

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

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

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

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

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

21 (3) Appointing authorities and supervisors.

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

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

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

31 (4) Members or employees subjected to harassment.

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

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

37 (A) The employee's supervisor. An employee may report conduct that the employee believes to  
38 be harassing conduct to the employee's supervisor. If an employee does not have a supervisor or is  
39 unaware of a supervisor, an employee may report concerns to other individuals listed in subpara-  
40 graphs (B) to (D) of this paragraph.

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

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

45 (D) The Office of the Legislative Counsel. An employee may report conduct that the employee

1 believes to be harassing conduct to the Legislative Counsel. The Legislative Counsel shall direct  
2 employees with concerns regarding harassing conduct to designated staff within the Office of the  
3 Legislative Counsel.

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

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

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

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

12 (5) Informal reporting process.

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

16 (b) A member of the Legislative Assembly or employee of the Legislative Branch may, within  
17 one year of the date of the alleged harassment, initiate an informal reporting process described in  
18 this subsection by reporting the harassing conduct to any of the parties listed in subsection (4) of  
19 this rule.

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

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

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

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

32 (g) If Employee Services conducts an investigation based on a report under this subsection,  
33 subject to the reporting requirement under subsection (3) of this rule, all members and employees  
34 involved in the investigation shall cooperate [*and keep information regarding the matter confidential.*  
35 *However, certain Legislative Branch records are subject to public records requests under ORS 192.410*  
36 *to 192.505*].

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

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

41 (6) Formal complaint process.

42 (a) A member of the Legislative Assembly or employee of the Legislative Branch may, within  
43 one year of the date of the harassment, initiate a formal complaint process by submitting a com-  
44 plaint with the Human Resources Director. In the event of a conflict with the Human Resources  
45 Director, the member or employee may initiate a formal complaint process with a representative

1 from Employee Services or the Chief Deputy Legislative Counsel.

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

3 (A) The name of the complainant;

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

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

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

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

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

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

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

15 (e) The persons who receive a formal complaint shall, within 10 days after receipt of the com-  
16 plaint, appoint an investigator. In all instances in which the person alleged to be involved in the  
17 harassment is a member of the Legislative Assembly, the investigator may not be an employee of the  
18 Legislative Branch and shall have experience conducting investigations of harassment. With respect  
19 to any other complaint, the persons who receive the complaint shall appoint an investigator who is  
20 an employee of Employee Services, an employee of the Office of Legislative Counsel or an investi-  
21 gator unaffiliated with the Legislative Branch with experience conducting investigations of  
22 harassment.

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

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

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

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

35 (j) Within five days after notification under paragraph (i) of this subsection, recipients may re-  
36 quest modifications to the findings of fact. Any requests to modify the findings of fact must be made  
37 in writing and must explain the reason for the modification. Requests for modification may be  
38 granted at the discretion of Employee Services and the Office of the Legislative Counsel.

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

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

45 (m) Even if no formal complaint process is initiated, Employee Services, in consultation with the

1 Office of the Legislative Counsel, shall investigate instances of severe or pervasive harassment or  
2 discrimination based on a protected class, which may result in corrective action against a member  
3 or employee who engages in harassment as described in this rule.

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

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

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

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

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

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

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

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

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

36 (F) If the person alleged to be involved in the harassment is a parliamentarian, notify the pre-  
37 siding officer of the chamber that elected the parliamentarian. The presiding officer shall imme-  
38 diately notify the alleged harasser of the fact that a report has been made and the name of the  
39 reporting party.

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

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

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

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

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

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

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

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

16 (8) Formal complaints against members.

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

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

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

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

32 (A) Reprimand;

33 (B) Censure;

34 (C) Expulsion; or

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

36 (e) The committee shall report its recommendation to the complainant and the person alleged  
37 to be involved in the harassment. The complainant and the person shall each have 10 days to re-  
38 quest that the committee review the recommendations. A request for review shall be in writing and  
39 shall state the requester's objections to the recommendation. A copy of the request for review shall  
40 be given to the other party, who shall have five days to respond in writing to the request for review.  
41 The committee shall consider the request for review and response and report its recommendation  
42 within 10 days after the date for the filing of the response to a request for review.

43 (f) At the end of any review period under paragraph (e) of this subsection, the committee's rec-  
44 ommendation shall be made to the chamber for which the committee serves. The chamber shall take  
45 action on the recommendation on the next day that it convenes. Any sanction considered by a

1 chamber shall be adopted by the chamber only upon receiving at least a two-thirds majority vote in  
 2 favor of adoption of the sanction.

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

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

7 (11) Liberty interest hearing for terminated employees.

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

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

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

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

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

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

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

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

26 (13) Human Resources Director duties.

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

29 \_\_\_\_\_  
 30  
 31  
 32 If you believe you have been a victim of harassment, you have options. You can tell the alleged  
 33 offender about the harassing conduct that disturbed you and ask the alleged offender to stop. You  
 34 can communicate to the alleged offender in person or in writing. You may also use the informal  
 35 report or formal complaint process set forth in Legislative Branch Personnel Rule 27 to pursue a  
 36 report or complaint of harassment if you:

37 (A) Do not want to confront the alleged offender directly;

38 (B) Have talked to the alleged offender and the harassing conduct has not stopped; or

39 (C) Believe your report or complaint has resulted in retaliation. In addition, you have the right  
 40 to seek redress with administrative agencies or the courts.

41 \_\_\_\_\_  
 42  
 43 (b) The Human Resources Director shall ensure that the text of the notice set forth in paragraph  
 44 (a) of this subsection is posted in common work areas for all members and employees, and is avail-  
 45 able on the Legislative Intranet.

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

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

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

10  
11 Legislative Branch Personnel Rule 28 is amended as follows:

12 **Rule 28. Safe and Healthy Workplace.**

13 **APPLICABILITY:** This rule applies to all members of the Legislative Assembly and to all em-  
14 ployees of the Legislative Branch.

15 (1) Policy. The Legislative Branch is committed to a drug-free and smoke-free workplace that  
16 encourages a safe, healthy and productive work environment.

17 (2) Drug-free Capitol.

18 (a) An employee may not, in the workplace, be under the influence of alcohol, marijuana or a  
19 prescribed or nonprescribed substance that impairs the employee's ability to safely and competently  
20 perform the duties of the employee's position or negatively impacts others in the workplace.

21 (b) An employee may not, in the workplace, be under the influence of, manufacture, distribute,  
22 dispense, possess or use an illegal substance.

23 (c) An appointing authority may grant leave with or without pay to permit any employee who  
24 requests to participate in a substance abuse assistance or rehabilitation program.

25 (3) Smoke-free Capitol. No one may smoke, aerosolize or vaporize an inhalant or use a smoking  
26 instrument, as defined in ORS 433.835, inside the Capitol, on Capitol grounds, within any Capitol  
27 courtyard, in the underground parking structure or within 10 feet of any entrance, exit, window that  
28 opens or ventilation intake that serves an enclosed area.

29 (4) Violation. A violation of this policy may be reported to a supervisor, manager or Employee  
30 Services. Additionally, in the event of unlawful conduct or conduct that gives rise to safety con-  
31 cerns, violations may be reported to Capitol security or the appropriate authorities. In the event of  
32 damage to Legislative Branch property caused by a violation of this rule, the Legislative Branch  
33 shall assess actual costs against the offending party, not to exceed \$5,000 per occurrence.

34 **(5) Retaliation.**

35 **(a) It is a violation of this rule for a person to retaliate against an employee, prospective**  
36 **employee or other person who has reported a violation of this rule because the employee,**  
37 **prospective employee or reporter has opposed any practice, made a complaint, instituted or**  
38 **caused to be instituted any proceeding or exercised on behalf of the employee, prospective**  
39 **employee, reporter or others any rights or protected activity described in this rule or ORS**  
40 **654.062, relating to workplace health and safety.**

41 **(b) As used in this paragraph, "retaliate" means fire, lay off, blacklist, demote, deny**  
42 **overtime or promotion, discipline, deny benefits, fail to hire or rehire, intimidate, make**  
43 **threats, reduce pay or hours or take any other adverse action.**

44  
45 Legislative Branch Personnel Rule 30 is amended as follows:



**Rule 30. Safety and Wellness Committee.**

APPLICABILITY: This rule applies to legislative agencies and parliamentary offices.

(1) Policy. It is the policy of the Legislative Branch to promote health and safety in places of employment for all employees, volunteers and visitors. Employee involvement in accident prevention is desired to promote a safe and healthy workplace. To accomplish this task a Safety and Wellness Committee (SWC) is established, consistent with ORS 654.182.

(2) Purpose. The SWC shall seek to eliminate risks and identify opportunities to educate and engage the staff of the Legislative Branch on health and safety issues in the workplace.

(3) Committee membership.

(a) The SWC shall consist of:

(A) Safety Coordinator and the Human Resources Director as permanent members; and

(B) At least one representative from:

(i) The Legislative Administrator's Office;

(ii) Financial Services;

(iii) Committee Services;

(iv) Information Systems;

(v) The Legislative Counsel Office;

(vi) The Legislative Fiscal Office;

(vii) The Legislative Revenue Office;

(viii) The Commission on Indian Affairs; *[and]*

**(ix) The Legislative Policy and Research Office; and**

*[(ix)]* **(x) Other Capitol building tenants, including the Oregon State Treasurer, the Secretary of State and the Governor's Office.**

(b) No interested party may be excluded from participation in the SWC.

(c) Whenever possible, a balanced membership must be maintained between management personnel and staff.

(d) Representatives on the SWC may be volunteers or elected by their peers.

(e) Representatives on the SWC shall serve a continuous term of one year (January 1 through December 31).

(f) Legislative Branch employees who serve as representatives on the SWC remain at-will employees.

(4) Committee meetings. The SWC shall meet during regular business hours. All representatives on the SWC shall be compensated at their regular hourly wage while they are engaged in SWC training or are attending SWC meetings.

(5) Duties and functions. The duties and functions of the SWC include, but are not limited to:

(a) Conducting an annual review of existing procedures and approving modifications to or adopting written procedures for:

(A) Reporting and investigating health and safety incidents, accidents, illnesses and deaths;

(B) Tracking and reporting incident statistics;

(C) Safety and wellness training for SWC members and legislative staff; and

(D) Workplace safety inspections by the SWC.

(b) In January of each year, conducting an annual review and evaluation of those records that are required to be maintained by the Occupational Safety and Health Administration, including those that reflect the prior year's incidents, accidents, illnesses and deaths, for the purpose of recommending corrective action necessary to prevent similar events from occurring.

1           (c) Evaluating current Legislative Administration policies and procedures that may impact  
2 health and safety in the workplace, and making written recommendations to the Legislative Ad-  
3 ministrator for modifying or adopting policies and procedures as necessary.

4

---