

Senate Concurrent Resolution 208

Sponsored by JOINT COMMITTEE ON CONDUCT (at the request of Senator Dick Anderson, Representative Jason Kropf, Representative Kevin Mannix, Senator Floyd Prozanski)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The measure makes changes to LBPR 27 to streamline processes and make the role of the investigator uniform. Says the LEO may help parties to agree as a way to resolve matters. Limits records to be made public to the final report. Defines terms and makes other changes. (Flesch Readability Score: 65.9).

Modifies Legislative Branch Personnel Rule 27 to combine conduct report and conduct complaint processes into a single process. Provides that only the final investigative report is disclosable to the public, under certain conditions. Authorizes the Legislative Equity Officer to seek a voluntary resolution of investigations. Permits participating impacted parties to withdraw allegations under certain circumstances. Authorizes the officer to continue investigations even without the participation of any impacted party if evidence supports continuing the investigation. Establishes definitions of "legislative business" and "workplace" for determining application of the rule. Modifies other definitions and makes the role of investigator the same without regard to impacted parties or respondents.

Applies to conduct reports and complaint statements made on or after the date of the adoption of the concurrent resolution, and to investigations of those reports and statements.

CONCURRENT RESOLUTION

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

That Legislative Branch Personnel Rule 27, as amended and in effect on June 24, 2021, is further amended, and Legislative Branch Personnel Rule 27-C is adopted, as follows:

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

(1) Policy.

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

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

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

(d) The Legislative Branch emphasizes the importance of fostering an environment where all

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.

viewpoints are welcomed and respected, as disagreement does not equal harassment.

(e) Members of the Legislative Assembly and all Legislative Branch employees are expected to conduct themselves in a manner that is free of harassment and to discourage all harassment in the workplace and at professional meetings, seminars or *[at]* any event at which legislative business is conducted.

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

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

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

(g) This rule is designed to provide options to those who are experiencing or observing harassing behavior, discriminatory behavior, retaliation or other behavior prohibited by subsection [(8)] **(7)** of this rule to seek information[,] **or** report behaviors *[or file complaints]* to address and resolve concerns, while also enhancing options available to victims who seek to remain anonymous. This rule provides options that are in addition to and not in lieu of any other remedy afforded by state or federal law, including remedies to address discrimination that is prohibited by ORS 659A.030 (including sexual assault) and ORS 659A.082 and 659A.112, all of which have a statute of limitations of five years.

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

(2) Application.

(a) Any individual *[who experiences behavior prohibited by this rule or observes behavior inconsistent with this rule]* may use the reporting **or consultation** options described in subsections **(9) and (10)** *[to (12)]* of this rule.

(b) An appointing authority or a nonpartisan staff supervisor, including any member of the Legislative Assembly, shall report behavior prohibited by this rule by the means described in subsection [(11)] **(10)** of this rule. If the appointing authority or supervisor is making a report because an individual has disclosed to the appointing authority or supervisor that the individual may be experiencing conduct prohibited by this rule, the appointing authority or supervisor, as soon as practicable after receiving the disclosure, shall provide a copy of the materials described in Legislative Branch Personnel Rule 32 (4)(a)(B) to (D) to the individual making the disclosure.

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

(A) Members of the Legislative Assembly;

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

(C) Lobbyists required to register under ORS 171.740;

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

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

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

(3) Definitions.

[(a)] *"Agency head" means the Legislative Administrator, the Legislative Counsel, the Legislative*

1 *Equity Officer, the Legislative Fiscal Officer, the Legislative Policy and Research Director, the Legis-*
 2 *lative Revenue Officer and the Executive Director of the Commission on Indian Services.]*

3 [(b)] (a) “Appointing authority” means the person who has authority in the interest of the em-
 4 ployer to hire, transfer, suspend, lay off, promote, terminate or discipline an employee.

5 [(c)] (b) “Caucus leader” means the Democratic or Republican leader of the Senate or the
 6 Democratic or Republican leader of the House of Representatives.

7 [(d)] “Caucus office” means the office of the Democratic or Republican leader of the Senate or the
 8 office of the Democratic or Republican leader of the House of Representatives.]

9 [(e)] (c) “Chamber” means the Senate or the House of Representatives.

10 [(f)] “Complainant” means a person who has filed a conduct complaint under subsection (12) of this
 11 rule.]

12 (d) “Complaint statement” means a written account of one conduct report or multiple
 13 related conduct reports stating allegations of conduct that violates this rule or another dis-
 14 closure or account by the Legislative Equity Officer of conduct that on its face may violate
 15 this rule, and that names one or more respondents.

16 [(g)] (e) “Employee” means an employee who is performing services on behalf of the Legislative
 17 Branch. “Employee” includes any intern, extern or volunteer who is affiliated with a Legislative
 18 Branch office.

19 [(h)] (f) “Employee Services” means the division of Legislative Administration charged with
 20 employment and human resources administration for the Legislative Branch.

21 [(i)] (g) “Human Resources Director” means the manager of Employee Services.

22 [(j)] (h) “Impacted party” means a person who is described in a conduct report made under
 23 subsection [(11)] (10) of this rule as one who has experienced behavior prohibited by this rule.

24 [(k)] (i) “Independent investigator” means an investigator under contract pursuant to ORS
 25 173.912, who is available to perform or is performing an investigation under this rule.

26 (j) “Investigative report” means a written report prepared by an investigator that reports
 27 the findings of an investigation undertaken under subsection (13) of this rule and the deter-
 28 minations required by this rule to be included in the report.

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

31 [(m)] (L) “Legislative Branch” means members and employees of the Legislative Assembly, the
 32 parliamentary offices, Legislative Administration, the Legislative Counsel Office, the Legislative
 33 Equity Office, the Legislative Fiscal Office, the Legislative Policy and Research Office, the Legisla-
 34 tive Revenue Office and the Commission on Indian Services.

35 (m) “Legislative business” means:

36 (A) The discussion of matters that are or reasonably foreseeably could be taken up as
 37 measures, motions or other action items on an agenda of a chamber or committee of the
 38 Legislative Assembly or on an agenda of a caucus of the Legislative Assembly;

39 (B) The discussion of the conduct of one or more members of the Legislative Assembly,
 40 legislative staff or other individuals who regularly are present in the State Capitol;

41 (C) The discussion of the conduct of a candidate for legislative office or of the staff of a
 42 candidate for legislative office; or

43 (D) The following, offered as nonexhaustive examples of “legislative business”:

44 (i) A meeting in a State Capitol office in which a member and legislative staff discuss
 45 what may occur at an upcoming committee meeting.

(ii) A social gathering at a conference center meeting room that is hosted by a trade association at which members and legislative staff are present to discuss issues that trade association representatives are considering seeking legislation to address.

(iii) A political campaign fundraising reception at which one or more members are present.

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

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

(p) "Nondisclosure agreement" means an agreement by which one or more parties subject to this rule agree not to discuss or disclose information regarding a *[complaint]* report of harassment, discrimination or sexual assault.

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

(r) "Nonpartisan staff" means an employee of the parliamentary offices, Legislative Administration, the Legislative Counsel Office, the Legislative Equity Office, the Legislative Fiscal Office, the Legislative Policy and Research Office, the Legislative Revenue Office or the Commission on Indian Services.

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

[(t) "Parliamentarian" means the Secretary of the Senate or the Chief Clerk of the House of Representatives.]

[(u) "Parliamentary office" means the Office of the Secretary of the Senate or the Office of the Chief Clerk of the House of Representatives.]

[(v) "Partisan staff" means an employee working directly for a member of the Legislative Assembly, an employee of a caucus office or an employee of the office of the Senate President or the office of the Speaker of the House of Representatives.]

(s) "Participating impacted party" means an impacted party who is participating in an investigation under subsection (13) of this rule.

[(w)] (t) "Protected class" means a classification established by law that offers protections to members of the classification, including but not limited to:

(A) Sex;

(B) Race;

(C) Ethnicity;

(D) National origin;

(E) Age;

(F) Religion;

(G) Marital status;

(H) Sexual orientation;

(I) Gender identity or expression;

[(J) Engaging in whistleblowing activity;]

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

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

3 [(M)] **(J)** Injured worker status;

4 [(N)] **(K)** Disability; [or]

5 [(O)] **(L)** Veteran status; **or**

6 **(M) Status as a victim or survivor of domestic violence.**

7 [(x)] **(u)** “Respondent” means a person named in a [conduct] complaint **statement** made under
 8 subsection [(12)] **(11)** of this rule as engaging in behavior that is prohibited by this rule or a person
 9 who is the subject of an investigation under subsection [(14)] **(13)** of this rule to determine whether
 10 the person engaged in behavior that is prohibited by this rule.

11 [(y)] **(v)** “Sexual assault” means unwanted conduct of a sexual nature that is inflicted upon a
 12 person or compelled through the use of physical force, manipulation, threat or intimidation.

13 [(z)] **(w)** “Supervisor” means an employee of the Legislative Branch who manages or directs the
 14 work of another employee of the Legislative Branch.

15 **(x) “Workplace” means:**

16 **(A) The State Capitol Building, the State Capitol State Park and any location where leg-**
 17 **islative business is conducted, including but not limited to an online or virtual location or**
 18 **the use of any technology that permits or facilitates communication; or**

19 **(B) Any location where conduct occurs that contributes to a hostile work environment**
 20 **under this rule.**

21 (4) Harassment, sexual harassment and hostile work environment.

22 (a) An individual engages in harassment by engaging in verbal or physical conduct, including
 23 making a visual display or causing a visual display to be shown, that denigrates or shows hostility
 24 toward an individual or group of individuals **on the basis of a protected class**. Examples of
 25 harassment may include, but are not limited to:

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

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

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

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

32 **(b) An individual engages in sexual harassment when the individual engages in unwel-**
 33 **come conduct of a sexual nature, including but not limited to sexual advances, flirtations,**
 34 **propositions, requests or demands for sexual favors, sexual comment, unwanted or offensive**
 35 **touching or physical contact, unwanted closeness, impeding or blocking movement, leering,**
 36 **whistling, touching or physical assault, sexual gesture, sexual innuendo, sexual joke, sexually**
 37 **charged language, verbal abuse of a sexual nature, verbal commentary about the body, sexual**
 38 **prowess or sexual deficiency of an individual, intimate inquiry, persistent unwanted courting,**
 39 **sexist insult, using sexually suggestive or obscene comments or gestures, displaying sexually**
 40 **suggestive objects or pictures, sending or forwarding electronic mail or other communi-**
 41 **cations of an offensive or graphic sexual nature, gender stereotype, discriminatory treatment**
 42 **based on sex, or other verbal or physical conduct of a sexual nature, if:**

43 **(A) Submission to the conduct is made either explicitly or implicitly a term or condition**
 44 **of a person’s employment;**

45 **(B) A person expressly or by implication conveys that declining to submit to the conduct**

1 will affect an individual's job, leave request, benefits, business before the Legislative As-
 2 sembly, influence or opportunity of the individual to engage professionally with the Legisla-
 3 tive Assembly, its members or staff; or

4 (C) The conduct creates a hostile work environment because the conduct is unwelcome
 5 and:

6 (i) Affects a person's ability to function in the workplace;

7 (ii) Denies a person the benefits of the workplace;

8 (iii) Has the purpose or effect of unreasonably interfering with a person's job perform-
 9 ance; or

10 (iv) Creates a work environment that a reasonable person would find intimidating, hostile
 11 or offensive.

12 (c) For purposes of paragraph (b) of this subsection, "unwelcome conduct" means con-
 13 duct that an individual does not solicit and that the individual regards as undesirable or of-
 14 fensive.

15 (d) An individual may withdraw consent to conduct that was previously welcomed, though
 16 a withdrawal of consent must be communicated to the person for whom consent is being
 17 withdrawn.

18 (e) Sexual harassment includes any conduct that constitutes sexual assault.

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

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

25 [(5) *Sexual harassment.*]

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

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

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

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

44 [(b) Sexual harassment includes but is not limited to:]

45 [(A) Unwanted sexual advances, flirtations or propositions.]

1 [(B) *Demands for sexual favors in exchange for favorable treatment or continued employment.*]

2 [(C) *Sexual jokes.*]

3 [(D) *Verbal abuse of a sexual nature.*]

4 [(E) *Verbal commentary about the body, sexual prowess or sexual deficiency of an individual.*]

5 [(F) *Leering, whistling, touching or physical assault.*]

6 [(G) *Using sexually suggestive, insulting or obscene comments or gestures.*]

7 [(H) *Displaying sexually suggestive objects or pictures.*]

8 [(I) *Sending or forwarding electronic mail or other communications of an offensive or graphic*
9 *sexual nature.*]

10 [(J) *Discriminatory treatment based on sex.*]

11 [(c) *Sexual harassment includes any conduct described in subsection (4) of this rule that is based*
12 *on sex.*]

13 [(d) *Sexual harassment includes any conduct that constitutes sexual assault.*]

14 [(6)] (5) Retaliation.

15 (a) A person engages in retaliation if the person treats another individual less favorably because
16 the individual made a good-faith [*complaint*] **report** about conduct prohibited by this rule or partic-
17 ipated in an investigation about conduct that is prohibited by this rule.

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

21 (c) A person engages in retaliation if the person treats another individual less favorably because
22 the individual made a good-faith [*complaint*] **report** or took other action to address conduct prohib-
23 ited **in this rule or** in any respectful workplace policy adopted by the Joint Committee on Conduct
24 under ORS 173.900[, *or this rule*].

25 (d) **A person engages in retaliation if the person treats another individual less favorably**
26 **because the individual engaged in a protected activity, including but not limited to:**

27 (A) **Engaging in whistleblowing activity;**

28 (B) **Opposing an employer's actions when the employee reasonably believes the actions**
29 **to be unlawful;**

30 (C) **Taking leave from work for purposes protected by law, including but not limited to**
31 **leave under the Oregon Family Leave Act, the federal Family and Medical Leave Act or**
32 **disability-related leave; or**

33 (D) **Making a reasonable accommodation request related to a disability, pregnancy or**
34 **religion.**

35 [(7)] (6) Examples.

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

40 (b) The [*Legislative Equity*] officer shall maintain and publish examples of what constitutes
41 harassment, a hostile work environment, sexual harassment and retaliation that have been approved
42 by the committee under this subsection.

43 [(8)] (7) Prohibitions.

44 The Legislative Branch prohibits conduct that:

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

(b) Constitutes sexual harassment *[and creates a hostile work environment]*;

(c) Constitutes *[an unlawful practice that aids or abets discrimination in a place of public accommodation under the laws of the state; or]* **discrimination that amounts to unfair treatment on the basis of being a member of a protected class;**

(d) Is retaliation~~[,]~~; **or**

(e) Is a failure to report harassment, sexual harassment, discrimination or retaliation by a person who is required to so report under this rule.

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

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

[(A) A confidential disclosure process described in subsection (10) of this rule;]

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

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

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

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

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

(8) Documentation.

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

[(10)] **(9) Confidential [disclosure process] process counseling.**

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

(a) Any individual who may be experiencing behavior prohibited by this rule, who may be observing behavior that is inconsistent with this rule or who has questions about this rule or about appropriate behavior in the workplace may confidentially meet or consult with the Legislative Equity Officer.

(b) Information reported to the *[Legislative Equity]* officer *[or offsite process counselor]*, records created by the officer *[or counselor]* and the identity of the individual *[making a disclosure]* **consulting with the officer** under this subsection are confidential and may not be disclosed by the officer *[or counselor]*, except that the officer *[or counselor]*:

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

(B) Shall disclose information if required by law;

(C) May disclose nonpersonally identifiable data to facilitate the Legislative Branch's identification of training and coaching needs; and

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

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

(A) The *[Legislative Equity]* officer may disclose nonpersonally identifiable information in the course of performing corrective coaching for an individual subject to the requirements of this rule.

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

(d) As an initial matter, when an individual seeks to *[make a confidential disclosure under this subsection, the Legislative Equity Officer or offsite process counselor shall]* **consult with the officer, the officer:**

(A) **Shall** explain the availability or lack of availability of any privilege that would permit the individual seeking to make a confidential *[disclosure under this subsection]* **report under this rule** to refuse to disclose, and to prevent any other person from disclosing, confidential communications and records; *[and]*

(B) **Shall** ask whether the individual *[making a confidential disclosure under this subsection]* needs one or more safety measures described in subsection *[(13)]* **(12)** of this rule put in place~~*;*~~;

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

[(A)] (C) Shall advise the individual *[making the disclosure of other]* **of** options that are available to address the conduct, including conduct reports under subsection *[(11)]* **(10)** of this rule, *[conduct complaints under subsection (12) of this rule,]* interim safety measures under subsection *[(13)]* **(12)** of this rule, state and federal administrative options with the Bureau of Labor and Industries and the Equal Employment Opportunity Commission of the United States, law enforcement or the civil judicial process;

[(B)] (D) In the case of an individual *[making the disclosure being]* **who consults with the officer and who is** affiliated with an institution that is subject to Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 to 1688, as amended, shall advise the individual of the Title IX reporting process and provide applicable institution contact information and information on the resources available at the institution;

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

[(D)] (F) Shall explain the actions that the officer *[or counselor]* may take following a *[disclosure made]* **consultation that occurs** under this subsection, and due process and other rights that limit the scope of actions that may be taken *[following a disclosure under this subsection]*, including possible limitations on the availability of safety measures.

[(f)] (e) If requested by an individual *[making a disclosure under this subsection, the Legislative Equity Officer or offsite process counselor]* **meeting with the officer under this subsection, the officer** shall refrain from making a confidential record of the identity of the individual making the disclosure. The officer *[or counselor]* shall explain the availability of this option to any individual making a disclosure under this subsection.

1 [(g)(A)] **(f)(A)** The [Legislative Equity] officer shall establish and maintain a means for individ-
 2 uals to make disclosures under this subsection that are entirely anonymous, so that the [Legislative
 3 Equity Officer or offsite process counselor] **officer** cannot determine the identity of the individual
 4 making a disclosure using means described in this paragraph.

5 (B) In the event of an anonymous disclosure made under this paragraph, paragraphs (d)[, (e) and
 6 (f)] **and (e)** of this subsection do not apply.

7 [(h)] **(g)** If the [Legislative Equity Officer or offsite process counselor] **officer** receives information
 8 concerning conduct that is inconsistent with a respectful workplace policy adopted by the Joint
 9 Committee on Conduct but that does not rise to the level of creating a hostile work environment
 10 or violating public accommodation law, the officer [or counselor] shall refer the reporter to the Hu-
 11 man Resources Director.

12 [(11)] **(10) Conduct reports.**

13 (a) Any individual [who experiences behavior prohibited by this rule or observes behavior that is
 14 inconsistent with this rule may make a nonconfidential] **may make a confidential** report of [the] be-
 15 havior under this subsection within five years of the date the behavior occurred. A report made
 16 under this subsection shall be referred to as a conduct report.

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

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

27 (d) A Legislative Branch contractor, or an employee of a contractor, that is contractually obli-
 28 gated to do so, shall promptly make a conduct report under this subsection if they have information
 29 that they received a report of conduct prohibited by this rule, have observed behavior prohibited
 30 by this rule or in any way have knowledge of behavior prohibited by this rule.

31 (e) Notwithstanding paragraphs (a) to (d) of this subsection[.],

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

35 [(B)] an individual is not required to make a conduct report under this subsection if the indi-
 36 vidual would be the subject of the report.

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

38 (A) An investigator;

39 (B) The Legislative Equity Officer;

40 (C) The Human Resources Director; or

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

43 (g) A reporter may make a conduct report in any form and using any means. However, the Joint
 44 Committee on Conduct established under ORS 173.900 shall establish uniform recordkeeping pro-
 45 cesses applicable to the Legislative Equity Officer and Employee Services to ensure that conduct

1 reports made under this subsection are adequately documented.

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

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

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

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

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

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

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

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

26 *[(12) Conduct complaints.]*

27 *[(a) Any person who experiences behavior prohibited by this rule or observes behavior that is in-
28 consistent with this rule may make a complaint under this subsection within five years after the date
29 the behavior occurred. A complaint made under this subsection shall be referred to as a conduct com-
30 plaint.]*

31 *[(b) A conduct complaint must:]*

32 *[(A) Be in writing;]*

33 *[(B) Identify the complainant and the person being accused of engaging in conduct prohibited by
34 this rule;]*

35 *[(C) Set forth the facts and circumstances that the complainant believes describe conduct that is
36 prohibited by this rule; and]*

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

41 *[(c) A conduct complaint shall be delivered to the Legislative Equity Officer. If the complaint is
42 delivered to an investigator, the investigator shall deliver a copy of the complaint to the officer.]*

43 *[(d) The Legislative Equity Officer shall promptly examine the conduct complaint and determine if
44 the complaint meets the requirements of paragraph (b) of this subsection. If the complaint does not meet
45 the requirements of paragraph (b) of this subsection, the officer shall request the complainant to sup-*

plement the complaint. A complaint that does not meet the requirements of paragraph (b) of this subsection may not be the subject of an investigation under subsection (14) of this rule.]

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

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

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

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

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

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

[(B) If the respondent:]

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

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

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

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

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

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

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

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

(11) Facial review and complaint statement preparation.

(a)(A) The Legislative Equity Officer shall review all conduct reports received pursuant to subsection (10) of this rule to determine whether the reported conduct, when taken on its face, could be prohibited by this rule. The officer may, in the officer's discretion, ask an independent investigator to determine whether the reported conduct, when taken on its face,

could be prohibited by this rule. If the officer or independent investigator determines that an investigation is warranted, the officer shall confer with each impacted party, provide an explanation of the investigation process and inform the impacted party that they may opt out of proceeding with an investigation. The officer shall provide confidential process counseling described in subsection (9)(d) of this rule to each impacted party that the officer has identified.

(B) If an impacted party does not opt out of proceeding with the investigation, an investigation as described in subsection (13) of this rule shall be undertaken for each conduct report for which a determination is made under subparagraph (A) of this paragraph that an investigation is warranted.

(C) If the impacted party opts out of proceeding with an investigation, the officer shall maintain confidential records of the report to be used for determining if there is a pattern of conduct that violates this rule or applicable respectful workplace policies. The officer shall provide the impacted party with information on available resources.

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

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

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

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

(b) If the officer or independent investigator determines that the reported conduct, when taken on its face, could be prohibited by this rule, the officer shall prepare a written complaint statement summarizing the allegations to be investigated under subsection (13) of this rule. The officer shall prepare the complaint statement if:

(A) An impacted party has elected to participate in the investigation; or

(B) The officer determines that the investigation can proceed without the participation of an impacted party.

(c) The officer shall provide a copy of the complaint statement:

(A) To the respondent on or before the date that an investigation commences under subsection (13) of this rule; and

(B) To each participating impacted party.

(d) The complaint statement may not be shared by the officer or the investigator with any person other than the investigator assigned to the matter under subsection (13)(c) of this rule, the respondent and participating impacted parties, except that the officer or investigator may disclose only those particulars set forth in the complaint statement that are needed to effectuate an interim safety measure to be implemented under subsection (12) of this rule.

[(13)] (12) Interim safety measures.

(a) [Upon receipt of a conduct report made under subsection (11) of this rule or a conduct complaint made under subsection (12) of this rule] **When a complaint statement is prepared under subsection (11) of this rule**, or at any time during the course of an investigation, the **Legislative Equity Officer or the** investigator assigned to this matter under subsection [(14)(c)] (13)(c) of this

rule may determine that an interim safety measure needs to be implemented to ensure the safety of *[the complainant or any other individual who has experienced behavior that is prohibited by this rule]* **an impacted party** or **any other individual** who may reasonably be foreseen as at risk of being subjected to behavior that is prohibited by this rule. The *[Legislative Equity]* officer *[or an offsite process counselor]* may also recommend an interim safety measure if interim safety measures are sought by an individual *[making a confidential disclosure]* **consulting with the officer** under subsection *[(10)] (9)* of this rule **or making a conduct report under subsection (10) of this rule, or if the officer determines that interim safety measures are otherwise warranted.** The investigator*[, officer or counselor]* **or officer** may recommend any interim safety measure that they determine is appropriate to the situation, including but not limited to:

(A) Temporary reassignment;

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

(C) Establishing a no contact order;

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

(E) Directing the respondent to be absent from the State Capitol until the investigation is complete; or

(F) In severe situations, involving law enforcement.

(b) An interim safety measure, whether described in paragraph (a) of this subsection or otherwise, may be applied to *[a complainant,]* **an impacted party** or respondent, except that an interim safety measure that is recommended or that is implemented may not prejudice *[a complainant or]* **an impacted party** or put *[a complainant or]* **an impacted party** in a worse position than the *[complainant or]* impacted party was in before the *[complaint was made]* **officer prepared the complaint statement.**

(c)(A) Any interim safety measure that is imposed may not unlawfully impair any lawful rights *[an accused person]* **a respondent** may exercise.

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

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

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

(B) The **officer or** investigator shall report the *[investigator's]* interim safety recommendation and the reasons for the recommendation to the respondent, to the committee and to the presiding officer of the chamber; and

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

(e) If the respondent is not a member of the Legislative Assembly, the **officer or** investigator shall make the *[investigator's]* interim safety recommendation:

(A) In the case of a respondent who is a Legislative Branch employee *[in either a partisan or*

1 *nonpartisan staff position*], to the employee's appointing authority.

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

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

6 (f) The person who receives the *[investigator's]* interim safety recommendation made under par-
7 agraph (e) of this subsection shall act promptly on the recommendation.

8 (g) The *[Legislative Equity Officer or an offsite process counselor that has received a confidential
9 disclosure under subsection (10) of this rule]* **officer** may recommend interim safety measures under
10 this subsection *[if requested by the individual making a disclosure under subsection (10) of this rule]*
11 except that the interim safety measure may not **identify an impacted party without the consent
12 of the impacted party.***[.]*

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

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

17 (h)(A) If *[a complainant,]* **an** impacted party or respondent is a member of the Legislative As-
18 sembly, the member may voluntarily agree to comply with an interim safety measure that conforms
19 with paragraphs (a), (b) and (c) of this subsection, if the interim safety measure is also approved by
20 the cochairpersons of the appropriate committee on conduct.

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

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

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

30 *[(14)]* **(13) Investigations.**

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

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

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

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

42 (c) At the time that a facial review of a conduct report *[or conduct complaint]* is undertaken, the
43 Legislative Equity Officer shall determine whether the investigation is to be performed by an inde-
44 pendent investigator or by an investigator who is an employee of the Legislative Equity Office[,
45 *except that if the facial review is being performed by an independent investigator, any investigation that*

1 follows facial review must be performed by an independent investigator].

2 (d)(A) An investigation that is to be conducted under this subsection shall be conducted
3 promptly and shall be completed as soon as is practicable. The investigation must be completed
4 within 84 days from the date the complaint *[is made]* **statement is delivered to the respondent**,
5 except that the Legislative Equity Officer may extend the time by which the investigation must be
6 completed if the investigator provides advance notice to *[the complainant]* **each participating im-**
7 **acted party** and the respondent of the extension and an explanation justifying the extension.

8 (B) If the respondent is someone other than a member of the Legislative Assembly, the
9 investigator may disclose the fact of the investigation and any relevant details of the inves-
10 tigation to the appointing authorities of a participating impacted party and the respondent,
11 if the investigator determines that there is a legitimate need to disclose the information.

12 (C) If the respondent is a member of the Legislative Assembly, the investigator may
13 disclose the fact of the investigation and any relevant details of the investigation that the
14 investigator determines there is a legitimate need to disclose, to:

15 (i) The appointing authority of a participating impacted party; and

16 (ii) The caucus leader of the caucus in which the member serves, except that if the
17 caucus leader is the respondent, then the investigator may disclose the information to the
18 presiding officer of the chamber in which the caucus leader serves and to a member who is
19 in an elected leadership position of the caucus in which the caucus leader serves.

20 (e) The investigator shall keep *[the complainant]* **each participating impacted party** and the
21 respondent apprised of the investigation timeline and the status of the investigation at the outset
22 of an investigation, on a regular basis thereafter and upon request of *[the complainant or]* **a par-**
23 **ticipating impacted party or the respondent.**

24 (f)(A) The investigator shall use best practices in conducting the investigation and shall make
25 findings of fact relevant to the allegations. The investigator shall prepare a draft *[written findings*
26 *of fact]* **investigative report** at least eight days before the investigation must be concluded under
27 paragraph (d) of this subsection and shall provide the draft *[written findings to the complainant]* **in-**
28 **vestigative report to each participating impacted party** and the respondent.

29 (B) *[If the respondent is someone other than a member of the Legislative Assembly, the draft*
30 *written findings]* **The draft investigative report** shall also contain a proposed finding of whether
31 one or more violations of this rule occurred.

32 (C) In all investigations, the investigator shall consider whether the conduct that is the subject
33 of the investigation constitutes discrimination, **harassment or retaliation** *[by denigrating or*
34 *showing hostility toward a protected class or toward an individual because of the individual's status*
35 *as a member of a protected class]*. The investigator shall report the investigator's considerations un-
36 der this subparagraph in the investigator's draft *[written findings]* **investigative report**. If the in-
37 vestigator determines that the conduct constitutes discrimination, **harassment or retaliation** *[by*
38 *denigrating or showing hostility toward an individual because of the individual's status as a member*
39 *of a protected class]*, the investigator may not specify in the investigator's draft *[written findings]*
40 **investigative report** the protected class to which the individual belongs. **The investigator or**
41 **Legislative Equity Officer may, in their discretion and consistently with due process princi-**
42 **ples, make redactions to the investigative report in order to protect impacted parties or to**
43 **promote the policies of this rule.**

44 (D) *[The complainant]* **Each impacted party who has elected to participate in the investi-**
45 **gation** and the respondent may give responses to the draft *[written findings]* **investigative report**

1 to the investigator within seven days of receiving the draft.

2 (E) The investigator shall consider responses supplied under subparagraph (D) of this paragraph
3 and shall prepare a final **investigative** report that sets forth the investigator's findings of fact and
4 considerations regarding the presence or absence of discrimination, **harassment or retaliation**
5 described in subparagraph (C) of this paragraph. [*If the respondent is someone other than a member*
6 *of the Legislative Assembly,*] The final **investigative** report [*should*] **must** also include a determi-
7 nation by the investigator of whether the facts constitute a violation of this rule.

8 (g)(A) If a member of the Legislative Assembly is the respondent, the investigator shall deliver
9 the final **investigative** report to [*the complainant*] **each impacted party who has participated in**
10 **the investigation**, the respondent, the Legislative Equity Officer and the committee on conduct for
11 the chamber in which the respondent serves on or before the date established under paragraph (d)
12 of this subsection for the completion of the investigation.

13 (B) [*The complainant*] **Each impacted party who has participated in the investigation** and
14 the respondent may [*each*] submit to the appropriate committee on conduct a written challenge to
15 the factual findings set forth in the final report within seven days of receipt of the report. A chal-
16 lenge must identify the factual findings that are the subject of the challenge and articulate the
17 reason those findings are in error.

18 (C) The committee on conduct shall conduct a hearing on the [*allegations made in the complaint*
19 *and the investigator's*] final **investigative** report within 21 days of receiving the report from the in-
20 vestigator. The committee shall permit [*the complainant*] **any impacted party** and the respondent
21 to appear, present documents and physical evidence and suggest witnesses. The committee may de-
22 termine to hear witnesses, but only committee members may question witnesses.

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

24 [(i) *Make a final determination of facts;*]

25 [(ii)] (i) Make a final determination of whether the facts constitute a violation of this rule; and

26 [(iii)] (ii) If the determination is that a violation of this rule occurred, prescribe or recommend
27 remedial measures as described in subsection (15) of this rule.

28 (h) If a member of the Legislative Assembly is the respondent and irrevocably resigns the
29 member's office at any time after the [*conduct complaint is made*] **investigation described in this**
30 **subsection is commenced**, the investigation [*described in this subsection*] and the committee on
31 conduct hearing and final committee determinations described in paragraph (g) of this subsection
32 shall nevertheless take place.

33 (i)(A) If someone other than a member of the Legislative Assembly is the respondent, the in-
34 vestigator shall deliver the final **investigative** report, including proposed findings of violations, to
35 [*the complainant*] **each impacted party who participated in the investigation**, the respondent and:

36 (i) In the case of a respondent who is a Legislative Branch employee [*in a nonpartisan staff po-*
37 *sition*], to the respondent's appointing authority.

38 [(ii) *In the case of a respondent who is a Legislative Branch employee in a partisan staff position,*
39 *to the respondent's appointing authority and, if the investigator determined that a violation of the rule*
40 *had occurred, to the committee on conduct of the chamber with which the employee is affiliated.*]

41 [(iii)] (ii) In the case of a respondent who is a State of Oregon employee but not a Legislative
42 Branch employee, to the Legislative Administrator and the respondent's agency director.

43 [(iv)] (iii) In the case of a respondent who is a lobbyist, employee of a contractor or member of
44 the public, to the Legislative Administrator.

45 [(v)] (iv) In all instances, to the Legislative Equity Officer.

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

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

(j) Nothing in this rule prohibits an investigator from:

(A) Referencing the complaint statement or any reports or investigative notes, files, records or other information in the draft or final investigative report; or

(B) Sharing information with witnesses or individuals interviewed during the course of the investigation.

(k) A participating impacted party may withdraw their allegations at any time prior to the investigative report being finalized. The Legislative Equity Officer shall make a determination of whether the investigation may continue without the participation of the withdrawing impacted party.

(14) Alternative resolution of an investigation.

(a) At any time prior to the delivery of a final investigative report under subsection (13)(g) or (i) of this rule, the Legislative Equity Officer may engage any impacted party and the respondent in discussion about a voluntary alternative resolution of the investigation. The officer may use:

(A) A formal mediation process;

(B) Informal negotiating between parties;

(C) Techniques of restorative justice to enable impacted parties and respondents to mutually engage in repairing harms and establishing positive paths forward; or

(D) Any other voluntary means to resolve the investigation.

(b) Undertaking an alternative resolution of an investigation under this subsection suspends the timeline for completion of an investigation under subsection (13) of this rule until the Legislative Equity Officer concludes that alternative resolution of the investigation will not be achieved. The officer shall inform the investigator of both the timeline suspension and of the need to resume the investigation.

(c) An agreement or agreed-upon outcome under this subsection brings to conclusion any investigation under subsection (13) of this rule with respect to:

(A) Any impacted party who joins in the alternative resolution efforts, but does not affect any participating impacted party who did not join in the alternative resolution efforts; and

(B) The respondent only if every participating impacted party has agreed to the alternative resolution.

(d) The parties who voluntarily join efforts to achieve an alternative resolution to the investigation do not waive any rights they may otherwise have under state or federal law.

(15) Remedial measures.

(a) In a case where the respondent is a member of the Legislative Assembly and the appropriate committee on conduct has made a determination under subsection [(14)(g)] **(13)(g)** of this rule that a violation of this rule has occurred, the committee shall impose any remedial measure that is sufficient to reprimand the member and deter future conduct that violates the rule, including but not limited to a reprimand, monetary fine or other remedy that the committee determines is appropriate under the circumstances:

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

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

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

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

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

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

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

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

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

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

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

[(C) If the Legislative Equity Officer determines that no remedial measures were imposed under subparagraph (B) of this paragraph or that the remedial measures imposed were substantially different from the remedial measures recommended by the committee, the officer shall notify the committee of the disparity. The committee may hold a hearing and may impose a remedial measure.]

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

[(d)(A)] **(c)(A)** In a case where the respondent is a lobbyist, employee of a contractor or other

1 person who is present in the State Capitol for professional or work reasons, or is a member of the
 2 public, and the investigator's final report determines that a violation of this rule has occurred, the
 3 Legislative Administrator shall determine an appropriate remedy that is consistent with the
 4 investigator's determination. The respondent may appeal the investigator's final report or the rem-
 5 edy determined by the Legislative Administrator to the cochairpersons of the Legislative Adminis-
 6 tration Committee within seven days of the Legislative Administrator's determination, except that
 7 any appeal must be based only on a claim described in paragraph (b)(B) of this subsection.

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

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

16 [(e)] (d) Each officer or entity charged with imposing a remedial measure under this subsection
 17 shall consider and weigh the presence or absence of discrimination, **harassment or retaliation** as
 18 described in subsection [(14)(f)(C)] (13)(f)(C) of this rule in the conduct found to be a violation of
 19 this rule. Because the Legislative Branch is committed to promoting a safe, respectful and inclusive
 20 workplace and environment in the State Capitol, a finding that discrimination, **harassment or re-**
 21 **taliation** was present in the conduct found to be a violation of this rule justifies enhancing the se-
 22 verity of the remedial measure to be imposed.

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

26 (A) A determination is made under subsection [(14)] (13) of this rule that no violation of this
 27 rule occurred; or

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

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

33 [(h)] (g) Notwithstanding paragraph [(g)] (f) of this subsection, an impacted party may volun-
 34 tarily request to enter into an agreement described in ORS 659A.370 (2), except that:

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

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

38 (16) Confidentiality and transparency.

39 (a) The investigator undertaking an investigation under subsection [(14)] (13) of this rule and the
 40 Legislative Equity Officer shall provide as much privacy as possible during the course of an inves-
 41 tigation.

42 (b) The investigator and the Legislative Equity Officer shall maintain all records and informa-
 43 tion about an investigation confidentially., *except that:*

44 [(A) The investigator may disclose the fact of the investigation and any relevant details of the in-
 45 vestigation to the appointing authority of the complainant and the respondent and the Joint Committee

on Conduct, if the investigator determines there is a legitimate need to disclose the information; and]

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

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

[(d)] (c) Records and information of the investigator and the Legislative Equity Officer shall be exempt from disclosure as prescribed under applicable law, except that, also as prescribed under applicable law:

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

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

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

(A) A final investigative report in which a member of the Legislative Assembly is the respondent is disclosable when the report is delivered to the appropriate conduct committee;

(B) A final investigative report in which someone other than a member of the Legislative Assembly is a respondent is subject to disclosure upon a determination being made that the person who was the subject of the investigation is subject to remedial measures or discipline; and

(C) Any agreement that serves as a resolution of an investigation under subsection (14) of this rule and in which the respondent is a member of the Legislative Assembly, or a written summary of a resolution of an investigation under subsection (14) of this rule in which the respondent is a member of the Legislative Assembly, is subject to disclosure. In all instances under this subparagraph, identifying information of any individual who is not a member of the Legislative Assembly may be redacted.

(17) Establishment of committees on conduct.

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

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

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

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

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

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

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

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

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

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

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

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

(18) Respectful workplace policies.

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

(b) In addition to establishing standards of conduct and giving examples of conduct that violates those standards, the policy shall establish procedures for determining and imposing remedial meas-

ures, including but not limited to training, coaching and counselling.

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

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

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

(19) Application.

The five-year limitation in [*subsections (11)(a) and (12)(a)*] **subsection (10)** of this rule applies to conduct occurring before, on or after the effective date of this rule, but does not operate to revive a claim barred by a previous iteration of this rule.

Legislative Branch Personnel Rule 27-C:

(1) The amendments to Legislative Branch Personnel Rule 27 by this concurrent resolution apply to conduct reports and complaint statements that are made on or after the date this concurrent resolution is adopted, and to investigations of those reports and complaint statements.

(2) This rule is repealed on December 31, 2030.
