

# Workplace Harassment Commission

FINAL REPORT



Annapolis, Maryland  
November 2018

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# Workplace Harassment Commission

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November 15, 2018

The Honorable Thomas V. Mike Miller, Jr.  
President of the Senate

The Honorable Michael E. Busch  
Speaker of the House

Gentlemen:

On behalf of the Workplace Harassment Commission, I am pleased to transmit to you the commission's final report.

You charged the commission with reviewing State workplace harassment policies, soliciting input from policy experts, and making recommendations to the Legislative Policy Committee to make the Maryland General Assembly the safest legislative workplace in the country. We recognized that the Legislative Branch already has anti-harassment policies in place, has routinely updated them since 1993 (most recently in 2017), and that it has harassment prevention training requirements for all legislators and employees. So in pursuing our charge, the commission focused on aligning the existing policies and requirements with national best practices. We identified gaps and loopholes in policies and training, we found ways to improve workplace harassment prevention, and we reviewed how harassment complaints are handled across State government, specifically within the Legislative Branch.

As part of our work, we heard from and met with State officials, workplace culture experts, employment law experts, nonprofit organizations, legislators, and lobbyists. We divided into subcommittees to focus on specific topics; our subcommittee work provided the foundation for our final recommendations.

The report submitted to you today contains 20 recommendations that, together, address our charge. Our recommendations are in line with best practices across the country, including improving workplace culture and training, strengthening existing anti-harassment policies, and clarifying the harassment complaint and investigative process. They include actions that can be implemented administratively by the Department of Legislative Services and other State agencies, as well as actions that will require funding commitments or legislative action.

The Honorable Thomas V. Mike Miller, Jr.  
The Honorable Michael E. Busch  
November 15, 2018  
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The commission members and I thank you for the privilege of serving you and the people of Maryland. Our work reflects our shared commitment to ensuring that the legislators and employees in the Legislative Branch can go to work in an environment that is equitable and diverse, and where everyone feels safe, valued for their work, and able to reach their full potential.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne D. Hitchcock". The signature is fluid and elegant, with the first letters of the first and last names being capitalized and prominent.

Jeanne D. Hitchcock  
Chair

JDH/RMN/ncs

**Maryland General Assembly**  
**Workplace Harassment Commission**  
**Membership Roster**  
**2018**

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Ryane Necessary



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# **Maryland General Assembly Workplace Harassment Commission Final Report**

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## **Introduction**

In October 2017, “#MeToo” began spreading virally across social media. At the time, it was being used by, and in support of, the women who spoke out about the alleged sexual misconduct of a Hollywood producer. A few months later in January 2018, a group of 300 women who work in film, television, and theater founded “Time’s Up,” a movement to recognize and support the women who had come forward in Hollywood, as well as the women of Alianza Nacional de Campesinas (the National Farmworker Women’s Alliance), who came forward regarding the widespread sexual harassment and assault they face as female farmworkers. Time’s Up also established a multimillion dollar legal defense fund administered by the National Women’s Law Center (NWLC) to support lower income women seeking justice for sexual harassment and assault in the workplace. Nearly overnight, what began as a social media hashtag grew into a movement calling attention to the widespread prevalence of sexual harassment and assault, especially in the workplace.

A year has passed since #MeToo began in earnest, and more victims of sexual harassment and assault continue to come forward. Since January 2018, NWLC has received over 2,500 requests for assistance from the Time’s Up Legal Defense Fund from people experiencing workplace sexual harassment and assault. Experts warn that workplace harassment occurs in every workplace, every industry, and at every level of employment, and that women and racial minorities are most at-risk of being a victim of workplace harassment. Over the past year alone, victims of sexual harassment and assault have come forward from a variety of workplace environments, including major corporations, national network news outlets, schools and college campuses, the U.S. Congress, and state legislatures. While the majority of victims of sexual harassment and assault are women, men can be victimized as well. Experts say that no occupation is immune from sexual harassment, but that the incidence of harassment appears to be higher in workplaces with stark power imbalances between workers and employers.

Unfortunately, sexual harassment that occurs at work often goes unreported. According to the U.S. Equal Employment Opportunity Commission (EEOC), roughly three out of four individuals who experienced harassment never talked to a supervisor, manager, or union representative about the harassing conduct. According to NWLC, victims are often reluctant to make allegations of sexual harassment for a number of reasons, including fear of losing their job or hurting their career, fear of not being believed, and the belief that nothing will be done about the harassment. As a result, workplace sexual harassment can be a barrier to women’s equality, economic security, and safety.

There are direct and indirect costs of workplace harassment. First, workplace harassment causes personal harm to the victims, who are likely to report symptoms of depression, general stress and anxiety, posttraumatic stress disorder, and overall impaired psychological well-being. Similarly, employees who observe or perceive mistreatment in their workplace can also suffer mental and physical harm. Second, workplace harassment can create significant costs to employers. According to the EEOC, from fiscal 2010 through 2015, employers paid out over \$698 million to employees alleging harassment through EEOC's administrative enforcement prelitigation process alone. Indirectly, workplace harassment can decrease overall productivity of an organization and level of engagement of employees, as well as increase employee turnover.

Employers are reacting swiftly to #MeToo and Time's Up by updating their anti-harassment policies, strengthening training requirements, and creating more pathways to reporting workplace harassment. Advocacy groups are pressing for legislation to expand protections for more employees and strengthen employees' ability to hold employers and individual harassers accountable. Experts say the best way to prevent workplace harassment is to create a *culture* within the organization where women are treated equally and all employees treat each other with respect. State governments across the country are also responding. For example, in August 2018, the State of New York launched a website called "Combating Sexual Harassment in the Workplace," which contains resources for employers and employees, including a model policy, model training materials, and a model complaint form. In September 2018, the Connecticut General Assembly updated its policy to improve complaint procedures, enhance investigative responsibilities, and create measures to protect victims.

The State of Maryland has already taken several steps to address workplace harassment. Each branch of State government has an anti-harassment policy, complaint procedures, and training requirements. In particular, the Legislative Branch has had an anti-harassment policy covering its legislators and employees in place and routinely updated since 1993 (most recently in 2017), and harassment prevention training is required for all legislators and staff at regular intervals. In 2016, the Women Legislators of Maryland (Women's Caucus) created a working group to research the current process of sexual harassment reporting and review policies in the General Assembly and best practices in other states. The work of the Women's Caucus led to a number of recommendations released in February 2018, including requiring the use of an independent investigator to investigate claims against members of the General Assembly and requiring mandatory anti-harassment training for lobbyists. The recommendations led to the passage of several bills during the 2018 legislative session, including Chapters 525 and 791 of 2018, which made several changes related to anti-harassment procedures, policies, and training applicable to State government. These bills are described in greater detail in **Appendix 4**.

In an effort to take a fresh look at the current anti-harassment policy and process to stay ahead of the curve in implementing national best practices for workplace harassment prevention in the Legislative Branch, the President of the Senate and the Speaker of the House of Delegates established the Workplace Harassment Commission (commission) in January 2018.

The commission was composed of 13 non-legislator members, most of whom held or currently hold senior posts in State and local government and the private sector. The commission was charged with reviewing current State anti-harassment policies, soliciting input from business leaders and policy experts, hearing public testimony, and making recommendations on the best practices regarding workplace harassment prevention and harassment complaint procedures. While the scope of the commission's work was focused on sexual harassment, it became evident that additional behaviors needed to be addressed, including workplace bullying.

The focus of the commission's work was driven by emerging research and policy. The commission was guided by information from the National Conference of State Legislatures (NCSL), a bipartisan nongovernmental organization established to serve the members and staff of state legislatures, that offered a number of benchmarks for creating a strong legislative sexual harassment policy, including elements recommended for an effective harassment prevention training program. The commission heard from employment law experts from NWLC, the University of Maryland, State government, and the private sector. The commission also reviewed the recommendations of the Women's Caucus, which had already spent a considerable amount of time studying these issues. The commission adhered to an accelerated timeline in response to the urgency and timeliness of the issues and to provide the General Assembly with recommendations for policy and statutory changes prior to the 2019 legislative session.

This final report summarizes the commission's work over the past 10 months and puts forth 20 recommendations that represent the consensus among the commission's members for improving and strengthening the manner in which the Legislative Branch prevents workplace harassment and handles workplace harassment complaints. A number of the commission's recommendations implement current national best practices gathered from written and oral testimony received by the commission since January.

## **Workplace Harassment Commission**

### **Process**

The commission was established in January 2018. The full commission met five times beginning in February 2018 through September 2018. Following the April 2018 meeting, the commission was divided into smaller subcommittees that met separately to focus on specific themes and make recommendations regarding those themes. A roster of subcommittees is shown in **Appendix 1**. From April through June, the subcommittees held meetings, and conducted research and interviews. Through July and August, the commission received the recommendations from each of the subcommittees. The subcommittee recommendations were then combined to create the foundation for the final recommendations. During its September meeting, the commission discussed and approved its final recommendations. The commission presents this final report to the Legislative Policy Committee (LPC), which will then make recommendations to the

Presiding Officers of the General Assembly and the Department of Legislative Services (DLS) regarding policy and statutory changes.

## **Overview of Commission Meetings**

In February, the commission heard from officials from the General Assembly and DLS who provided an overview of the current anti-harassment policies of the Legislative Branch. The commission heard from representatives from the Judicial Branch, Executive Branch, Maryland Commission on Civil Rights (MCCR), and the State Ethics Commission at its March meeting. During this meeting, representatives from the Judicial and Executive branches provided overviews of their policies and an Executive Branch representative also presented information on workplace bullying. MCCR and the State Ethics Commission both provided an overview of their complaint processes. At the April meeting, the commission heard from several experts in employment law and workplace harassment, including representatives of NCSL; the University of Maryland Francis King Carey School of Law; NWLC; and Buckley Sandler, LLP. The agendas for these meetings are included in **Appendix 2**.

## **Focus of Commission**

The State of Maryland, including the Legislative Branch, has an existing framework of federal and State laws, policies, and procedures in place that prohibit sexual harassment, provide for the handling of sexual harassment complaints, and aim to prevent sexual harassment. Under federal law, sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964, which generally applies to employers with 15 or more employees, including state and local governments. Similarly, State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability.

Maryland also has its own civil rights commission that is designated to handle discrimination complaints. MCCR, the origins of which can be traced back to 1927, is an independent agency that serves individuals, businesses, nonprofit organizations, and communities throughout the State, and is authorized to investigate complaints of discrimination in employment, housing, public accommodations, and the State's commercial non-discrimination policy from members of protected classes covered under State law. MCCR, as a public service, also offers a number of resources for State agencies, businesses, and community organizations across the State, including training sessions, guidance, and written literature, such as posters and brochures. Similarly, each branch of government has internal procedures in place for reporting and handling complaints of sexual harassment. Additional information on the federal and State framework for sex discrimination in Maryland can be found in **Appendix 3**.

In light of this existing framework, the commission focused on identifying any gaps, loopholes, and other areas for improvement across State government, and specifically within the Legislative Branch. The commission also compared the practices of the Legislative Branch with best practices from private-sector employers and other states.

## Subcommittees

The commission was divided into four subcommittees. Each subcommittee was created with a mission to guide its work. The *Scope of the Workplace Harassment Commission Subcommittee* provided the commission with guidance on the range of issues, policies, and procedures that should be addressed to support a process that is both meaningful and practical. The *Women's Caucus Recommendations Subcommittee* examined the policy recommendations made by the Women's Caucus in its February 2018 report that were not addressed by Chapter 525 of 2018 and provided suggestions as to how those recommendations might be effectively implemented. The *Aligning Procedures and Policies Across State Government Subcommittee* gained an understanding of the various policies and practices of each branch of State government to identify common best practices, areas of overlap, and potential resource sharing opportunities. Finally, the *Workplace Culture Strategies Subcommittee* sought to identify and understand the characteristics that contribute to a culture of harassment in the workplace and develop strategies to change the workplace culture. As part of their work, the subcommittees met with legislators, State agency officials across the branches of government, lobbyists, and other experts in the fields of employment law, sexual harassment, independent investigations, and workplace culture. They also consulted academic journals and other publications.

## Recurring Themes Identified by the Commission

Several themes guided the commission's discussions and, ultimately, contributed to the commission's final recommendations.

### Workplace Culture is Key

The long-term answer to addressing workplace harassment is fostering a ***positive workplace culture***. Workplace culture establishes the behavior and shared values of the organization. Fostering a positive workplace culture means creating and maintaining a workplace that is equitable and diverse, and where all employees feel safe, valued for their work, and able to reach their full potential. Policies and procedures within the organization must support the overall well-being of employees. A healthy workplace culture positively affects employees' health and job satisfaction, and can improve employee retention.

Employers can improve workplace culture by taking a holistic approach. This approach includes improving diversity in the workplace, hiring more women, and promoting more women to positions of leadership within an organization. This approach may also need to address structural

barriers that keep women and racial minorities from entering, staying, and succeeding in the workplace, including equal pay, paid leave, flexible work schedules, childcare assistance, and equitable hiring, review, and promotion practices. It is paramount that leadership within an organization embraces this culture and sets the “tone at the top.”

The commission recommends a number of specific ways to improve the workplace culture within the Legislative Branch, including *improving awareness* regarding reporting harassment and *providing victims with information about their rights*, which creates an environment where victims feel safe coming forward. The commission recommends *regular climate surveys* to be conducted to assess progress towards eliminating harassment in the workplace. The surveys should be repeated to ensure that change has occurred and is being maintained. In an effort to support professionalism and proper office decorum, the General Assembly should consider whether its members should be permitted to maintain their district office in their personal residence. Finally, the commission recommends that *alcohol use within the legislative complex be prohibited*, except at authorized events. While alcohol does not cause harassment, according to the EEOC, workplace cultures that tolerate alcohol consumption during and around work hours provide a greater opportunity for harassment because alcohol reduces social inhibitions and impairs judgement. Similarly, research has shown that workplaces where alcohol is consumed by clients or customers are at higher risk of harassment.

### **Training is Important, but Not Enough**

Training plays an essential role in preventing workplace harassment, but it is only one element in the holistic approach required to change workplace culture. According to experts, *training should be mandatory, specialized, and narrowly tailored* to its audience. In Maryland’s Legislative Branch, that means separate training for legislators and staff, and separate training for supervisors and non-supervisory employees. Training for individuals who provide the training (called “training for trainers”) may also be necessary.

As for the content of trainings, experts recommend *dynamic, in-person training conducted by a live trainer*, specifically highlighting situations unique to the legislature. Training may and should include information regarding legal requirements, but it is critical that training have a broader focus. Presentations should include information regarding culture, professionalism, and how to create an environment where harassment is not tolerated. In addition, the commission heard testimony about a new approach that is being used in the university campus setting as a way to reduce the incidence of campus sexual assault, called “*bystander intervention*.” Bystander intervention is when an engaged bystander recognizes a potentially harmful situation or interaction and chooses to respond in a way that could positively influence the outcome, by speaking up or disrupting the situation. Experts say that this approach is unique because it creates a sense of collective responsibility for prevention, makes the community of the workplace part of the solution, and because it can, ultimately, impact and improve the culture of the workplace. In the school and college setting, EEOC reports that bystander intervention training has been shown to help change social norms and empower students to intervene with peers to prevent assaults from

occurring. The commission believes that bystander intervention training may be effective in the workplace as well, and should be included as part of any mandatory training program.

### **Policies Must be Comprehensive and Clear**

Despite the fact that Maryland's Legislative Branch has had an anti-harassment policy in place since 1993, there is room for improvement. For example, there are currently two separate policies for the General Assembly and DLS, respectively. They can be found in **Appendix 4**. The commission believes that these policies should be combined for consistency and clarity. Additionally, while the current policies prohibit retaliation for reporting workplace harassment, this prohibition should be updated with a clear definition of retaliation, including examples of prohibited retaliatory behavior.

Experts suggest that employers need to go above and beyond what the law requires to prevent workplace harassment, and this includes covering more behaviors under their anti-harassment policies, including behaviors that may not rise to the level of being illegal. In this context, the commission explored workplace bullying, which can be described as intentional, persistent, malicious, unwelcome, severe, or pervasive conduct that harms, intimidates, offends, degrades or humiliates an employee, whether verbal (including written or electronic) or physical at the place of work. Workplace bullying may or may not be race or gender motivated. According to experts, when bullying-type behaviors are allowed to persist in the workplace, they often lead to more serious, and possibly illegal behaviors in the workplace. For these reasons, the commission recommends *expanding the existing anti-harassment policy to prohibit workplace bullying*.

### **Investigation Process Must Balance Confidentiality with Transparency**

The confidentiality of the parties involved in a workplace harassment investigation is paramount to the integrity of the investigation. Confidentiality must be maintained except as necessary to conduct and resolve the investigation. Further, victims need to know when, with whom, and how information will be shared during the course of an investigation. Establishing a clear and transparent investigation process from the start will inspire trust in the investigative process and, ultimately, make the process more meaningful and efficient. The procedures for an investigation must be clearly stated, especially in the case of investigations conducted by outside investigators. This balance of confidentiality and transparency must be maintained in a way that encourages victims to come forward, protects the confidentiality of the parties involved, keeps the parties involved informed throughout the process, and provides policymakers with enough aggregate or generalized data to inform decision making.

### **Coordination Among Branches of Government**

There are reasons why coordination among branches of government is useful, despite the nature of the different functions and environments among the three branches of State government. The commission heard testimony from the Executive and Judicial branches of government, both

of which already have comprehensive policies and procedures in place. The commission also heard testimony about the importance of specialized training, so requiring uniform training across State government may run counter to that advice. While the commission believes that each branch of government should have its own policy that is specifically tailored to its own needs, there may be instances where sharing information among branches of government can be beneficial to all. Consequently, the commission recommends ***considering opportunities for combined training across the branches of government***, in particular for individuals within each branch of government who are responsible for informing employees of their rights under the law, handling complaints, and other human resource functions that relate to workplace harassment.

The branches of government should coordinate the manner in which they collect and report data in order to inform policymaking. Accordingly, the commission recommends that the three branches of government develop a ***uniform format and process*** to collect and report data related to workplace harassment.

### **Statutory Changes for Further Consideration by the General Assembly**

The commission heard from several witnesses who raised issues that would strengthen workplace harassment protections and accountability, but also require statutory changes. Specifically, NWLC and the Maryland Coalition Against Sexual Assault submitted testimony in support of several statutory changes, which would expand the application of current prohibitions on harassment and discrimination to more individuals in the workplace, extending the time period by which a person may bring an anti-discrimination action under State law, and authorizing victims to sue individual harassers (and not just the employer) under State anti-discrimination laws. In the interests of time, the commission was unable to thoroughly evaluate each proposal. However, the commission does recommend that the proposed statutory changes merit further consideration by the General Assembly.



## Workplace Harassment Commission Final Recommendations

The commission presents these final recommendations to LPC to inform the Presiding Officers of the General Assembly and DLS regarding policy and statutory changes that may improve and strengthen the manner in which the Legislative Branch prevents workplace harassment and handles workplace harassment complaints.

Category	Recommendation
Culture	<p><b>Improve Awareness – Posting Signage</b></p> <p>Post clear and accessible signage around the legislative complex with information on how and where to report workplace harassment.</p> <p>Make materials and training available to support victims who wish to respond to harassment directly (self-help).</p>
Culture	<p><b>Rights of Victims</b></p> <p>Develop a list of potential victim’s advocates and make the list available to all employees and members.</p> <p>Make it clear in signage and other written materials that a victim is entitled to have a lawyer or advocate with them to participate in any proceedings.</p> <p>Make it clear to all victims that they also have a right to file a complaint with MCCR or EEOC, and specify the timeframes for filing complaints with MCCR or EEOC.</p>
Culture	<p><b>Establish Alcohol Policy</b></p> <p>Ban the consumption of alcohol in the legislative complex, except at authorized events. Establish penalties for violations of the policy.</p>
Culture	<p><b>Restrict the Location of District Office</b></p> <p>Prohibit a member from operating a district office in their personal residence.</p>

Category	Recommendation
Culture	<p><b>Climate Surveys</b></p> <p>Every two years, DLS should conduct a climate survey of legislators and staff to assess the incidence, prevalence, and other characteristics of incidents of workplace harassment.</p> <p>Every two years, the State Ethics Commission should conduct a climate survey of all registered lobbyists to assess the incidence, prevalence, and other characteristics of incidents of workplace harassment.</p> <p>DLS and the State Ethics Commission should coordinate with regard to the content and format of the surveys.</p>
Training	<p><b>Format and Method of Training</b></p> <p>Require training to be specialized for members and legislative staff, and specific to the functions of the Legislative Branch, including relevant scenarios. Training should be further specialized for supervisors and non-supervisory staff.</p> <p>Require all training to occur in-person with a live, dynamic, and expert trainer.</p>
Training	<p><b>Bystander Intervention</b></p> <p>Require workplace harassment prevention training to include information on bystander intervention, including strategies to empower bystanders and role-playing scenarios.</p>
Training	<p><b>Combined Training Opportunities</b></p> <p>Consider opportunities for combined training across the three branches of government, including cross-training of designated individuals in each branch who are responsible for informing employees of their rights under the law, handling complaints, and other human resource functions that relate to workplace harassment.</p>
Training	<p><b>Annual Compliance Reporting</b></p> <p>Require that the appropriate entity within each branch of government report to MCCR on how many individuals have received workplace harassment training and the content of the training program.</p> <p>Require MCCR to share the training compliance reports with the Department of Budget and Management and DLS.</p>

Category	Recommendation
Policy Changes	<p><b>Combine Policies for the General Assembly and DLS</b></p> <p>Combine the policies for the General Assembly and DLS for consistency and clarity.</p>
Policy Changes	<p><b>Strengthen Prohibition on Retaliation</b></p> <p>Include a more detailed prohibition on retaliation in the anti-harassment policy, which should include a definition of retaliation and examples of retaliatory behavior.</p>
Policy Changes	<p><b>Workplace Bullying</b></p> <p>Expand existing anti-harassment policies to include a prohibition on workplace bullying. Explore opportunities to adopt a uniform approach across branches of government.</p>
Policy Changes	<p><b>Uniform Data Collecting and Reporting Across Branches of Government</b></p> <p>The three branches of government should develop a uniform format and process to collect and report data related to workplace harassment.</p>
Investigations	<p><b>Promote Transparency</b></p> <p>The commission recommends reinforcing the following principles to promote transparency regarding investigations within the Legislative Branch:</p> <ul style="list-style-type: none"> <li>• Provide for individual transparency, so that the complainant and respondent, or their attorneys will be provided with appropriate periodic updates on the status of a complaint.</li> <li>• Provide for institutional transparency, so that aggregate information regarding complaints and investigations can be made available to inform future policy decisions.</li> <li>• In accordance with State law, maintain the confidentiality of the identity of the victim, complainant, and respondent to the extent possible during an investigation.</li> <li>• Inform the complainant and respondent in an investigation of the resolution of the investigation.</li> <li>• Clarify that the complainant and respondent may have an attorney or advocate who may receive information and participate in proceedings.</li> </ul>

Category	Recommendation
Investigations	<p><b>Independent Investigations</b></p> <p>Review existing procedures for independent investigations.</p> <p>Specify the procedures for independent investigations to inspire trust in the investigatory process and, ultimately, make the process operate efficiently. Specific procedures may include the following: (1) defined roles and responsibilities of independent investigators; (2) specific instructions regarding confidentiality and information security; (3) authorization for independent investigators to conduct interviews and review certain information; and (4) guidance detailing an individual's obligations to respond to requests made by independent investigators.</p>
Investigations	<p><b>Influencing Investigations and Interim Remedial Measures</b></p> <p>Prohibit legislators from influencing or attempting to influence an investigation or findings of fact.</p> <p>Require the presiding officers to be advised of requests for <i>interim remedial measures</i> and steps taken to prevent retaliation and interference with an ongoing investigation. Any person making a report or investigating a report may request an interim remedial measure. If the presiding officers must be involved to adopt an interim remedial measure, they will be provided with information needed to make a decision.</p>
Investigations	<p><b>List of Independent Investigators</b></p> <p>Develop and maintain a list of qualified independent investigators available for workplace harassment investigations across the three branches of government<sup>1</sup>. Appointment of investigators should rotate to avoid repeatedly using the same investigator.</p>
Investigations	<p><b>Repeated Allegations</b></p> <p>For complaints against non-legislators, authorize the DLS Human Resources Director to investigate and address repeated allegations against the same individual, including initiating disciplinary procedures, as part of enhanced data- and recordkeeping practices regarding allegations of and investigations into unlawful workplace harassment.</p>

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<sup>1</sup> The Office of the Attorney General may be best suited to develop and maintain this list.

Category	Recommendation
Funding	<p><b>Additional Resources for Training and Investigations</b></p> <p>Appropriate additional resources for enhanced training requirements and investigatory procedures to MCCR, DLS, and the State Ethics Commission.</p>
Legislative Action	<p><b>Recommended Statutory Changes for Further Consideration by the General Assembly</b></p> <p>Expand the prohibitions on harassment and discrimination to individuals who are granted special access in the legislative complex, including those individuals who are exempt from registration under § 5-702(b)(1) of the General Provisions Article, and provide a mechanism for revocation of special access if the individual commits harassment and discrimination.</p> <p>Extend the time limit by which a person may bring an anti-discrimination action under State law from two years to three years (State Government Article § 20-1013).<sup>2</sup></p> <p>Amend the definitions of “employee” and “employer” to expand the application of State anti-discrimination laws to employers with fewer than 15 employees and independent contractors (State Government Article § 20-601).</p> <p>Authorize victims to sue individual perpetrators under State anti-discrimination laws (State Government § 20-601).</p> <p>Clarify that “supervisors” include employees who have the authority to direct another employee’s daily activities (State Government Article § 20-606).</p> <p>Expand the application of State anti-discrimination laws to individuals chosen by an elected officer to be on the officer’s personal staff (State Government Article § 20-601(c)(2)(ii)).</p>

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<sup>2</sup> A complainant may bring a civil action against the respondent if the complainant (1) initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice by the respondent; (2) at least 180 days have elapsed since the filing of the administrative charge or complaint; and (3) the civil action is filed within two years after the alleged unlawful employment practice occurred. The 180-day exhaustion requirement does not toll the time for filing.



## **Appendix 1. Roster of Subcommittees**

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### **Subcommittee – Scope**

Michael Morrill, Chair  
Lisae C. Jordan

### **Subcommittee – Women’s Caucus Recommendations**

Amanda LaForge, Chair  
Lisae C. Jordan  
Lisa Jackson  
Susan Russell

### **Subcommittee – Aligning Procedures and Policies Across Branches of Government**

Elisabeth Sachs, Chair  
Sophia Silbergeld  
Senator Robey  
Michael Morrill

### **Subcommittee – Workplace Culture Strategies**

Diane Croghan, Chair  
Dr. Peggy Naleppa  
Mary Keating  
Celeste Morgan





## **Appendix 2. Meeting Agendas**

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# **Workplace Harassment Commission**

**Friday, February 16, 2018**

**12pm**

**Amoss Hearing Room**

## **Agenda**

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**I. Welcome**

**II. Overview of the Current Anti-Harassment Policy of the Legislative Branch**

- Vicki Gruber, Executive Director, Department of Legislative Services
- Lori Mathis, Manager of Human Resources, Department of Legislative Services
- Dea Daly, Ethics Counsel, Maryland General Assembly
- Sandy Brantley, Counsel to the General Assembly, Office of the Attorney General

**III. Scheduling**

**IV. Closing Remarks**

# **Workplace Harassment Commission**

**Friday, March 23, 2018**

**11am–1pm**

**Amoss Hearing Room**

## **Agenda**

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### **I. Judicial Branch – Overview of Policy**

- Warren Hedges, Maryland Judiciary Fair Practices Officer
- Stacey Saunders, Assistant Administrator, Judicial College of Maryland

### **II. Executive Branch – Overview of Policy**

- Glynis Watford, Equal Employment Opportunity Coordinator, Department of Budget and Management
- Cynthia Kollner, Executive Director, Office of Personnel Services and Benefits, Department of Budget and Management

### **III. Maryland Commission on Civil Rights – Overview of Complaint Process**

- Glendora Hughes, General Counsel, Maryland Commission on Civil Rights

### **IV. State Ethics Commission – Overview of Complaint Process**

- Michael Lord, Executive Director, State Ethics Commission

### **V. Maryland General Assembly Women’s Caucus – Presentation of Sexual Harassment Policy Recommendations**

- Delegate Ariana Kelly, President, Women’s Caucus

### **VI. Discussion of Next Steps – Next Meeting Friday, April 27, 2018**

# **Workplace Harassment Commission**

**Friday, April 27, 2018**

**11am–1pm**

**Amoss Hearing Room**

## **Agenda**

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### **I. Presentations**

- Jonathan Griffin, Program Principal, National Conference of State Legislatures
- Marley Weiss, Professor of Law, University of Maryland Francis King Carey School of Law
- Maya Raghu, Director of Workplace Equality and Senior Counsel, National Women's Law Center
- Tina Tchen, Partner, Buckley Sandler
- Antonio Reynolds, Partner, Buckley Sandler

### **II. Subcommittees**

### **III. Discussion of Next Steps – Next Meeting Friday, June 1, 2018**

# **Workplace Harassment Commission**

**Thursday, July 12, 2018**

**10am–12pm**

**Amoss Hearing Room**

## **Agenda**

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### **I. Presentation of Subcommittee Recommendations**

- Women's Caucus Recommendations Subcommittee
- Aligning Procedures and Policies Across Branches of Government Subcommittee
- Workplace Culture Strategies Subcommittee

### **II. Discussion of Recommendations**

### **III. Discussion of Next Steps**

**Workplace Harassment Commission**

**Thursday, September 20, 2018**

**1pm–3pm**

**Senate Budget and Taxation Committee Room**

**Agenda**

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**I. Discuss and Decide on Draft Recommendations**

**II. Discuss Final Report**

**III. Next Steps**





## **Appendix 3. Framework of Federal and State Law and Policy**

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### **Federal Framework**

#### **Title VII of the Civil Rights Act of 1964**

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

#### **U.S. Equal Employment Opportunity Commission (EEOC)**

The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered. Anti-discrimination laws apply to all types of work situations, including hiring, firing, promotions,

harassment, training, wages, and benefits. EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If EEOC finds that discrimination has occurred, it tries to settle the charge. If not successful, EEOC has the authority to file a lawsuit to protect the rights of individuals and the interests of the public but does not, however, file lawsuits in all cases in which there was a finding of discrimination.

## **State Framework**

### **Title 20 of the State Government Article**

Similarly, State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. For the purposes of this prohibition, the State and local governments are considered employers.

Harassment occurs when an employee is subjected to discriminatory behavior or practices based on the protected characteristics specified above. As under federal law, under State law sexual harassment is also a form of sex-based discrimination. Each branch of State government is governed by the laws, personnel policies, and procedures applicable in that branch unless otherwise specified by law. Thus, an employee or official in the Judicial, Legislative, or Executive branch of State government is governed by separate, although substantially similar, prohibitions on discriminatory conduct and illegal harassment.

### **Maryland Commission on Civil Rights (MCCR)**

An individual alleging employment discrimination in the State of Maryland may file a complaint with MCCR. When a charge is filed with MCCR, it is automatically "dual-filed" with EEOC if federal laws apply. If a complaint is filed with MCCR and an agreement to remedy and eliminate the discrimination cannot be reached, the matter may be heard before an administrative law judge. Remedies available on a finding that the respondent is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief; (3) awarding compensatory damages for pecuniary and nonpecuniary losses; and (4) ordering any other equitable relief that the administrative law judge considers appropriate.

A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own behalf under the same conditions. If an

election for a civil action is made, MCCR must file, within 60 days after the election, a civil action in the circuit court for the county where the alleged discrimination occurred. On a finding that discrimination occurred, the court may provide the remedies specified above.

A complainant may file a private civil action against the respondent if (1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging discrimination; (2) at least 180 days have elapsed since the filing of this complaint or charge; and (3) the civil action is filed within two years after the alleged discrimination occurred. In addition to the remedies specified above, the court may award punitive damages if (1) the respondent is not a governmental unit or political subdivision and (2) the court finds that the respondent has engaged or is engaging in discrimination with actual malice. The filing of a private cause of action automatically terminates any proceeding before MCCR based on the underlying administrative complaint and any amendment to the complaint. Any party may demand a jury trial if a complainant seeks compensatory or punitive damages. Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party in a civil action reasonable attorney's fees, expert witness fees, and costs.

## **Recent Changes to State Law**

The General Assembly passed several bills during the 2018 legislative session related to workplace harassment. They are summarized below.

### **Anti-harassment Policies, Procedures, and Training**

Chapter 525 of 2018 made several changes related to anti-harassment procedures, policies, and training applicable to State government, including (1) prohibiting Executive Branch officials from unlawfully harassing or discriminating against an official, employee, intern, page, fellow, lobbyist, or member of the press<sup>3</sup>; (2) requiring an update of the anti-harassment policy and procedures governing members and employees of the General Assembly; (3) requiring the Joint Committee on Legislative Ethics to review complaints involving General Assembly members that allege violations of the anti-harassment policy; (4) establishing anti-harassment duties and procedures for the State Ethics Commission relating to regulated lobbyists; and (5) establishing specific prohibitions relating to sexual harassment for lobbyists.

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<sup>3</sup> Section 5-508 of the General Provisions Article, established by Chapter 525 of 2018, prohibits specified State officials, based on any characteristic protected by law, from unlawfully harassing or discriminating against (1) an official or employee; (2) an intern, page, or a fellow in any branch of State government; (3) an individual regulated lobbyist; or (4) a credentialed member of the press. As enacted, the State Ethics Commission is responsible for implementing (investigating harassment and discrimination complaints) and enforcing this section. Additionally, this section would require the State Ethics Commission to investigate complaints for an additional approximately 140 employees across the State, who currently have no other pathway to reporting a complaint other than MCCR/EEOC. Legislative action would be necessary to shift this responsibility to another entity within State government that has the investigative and human resources expertise to handle complaints of workplace harassment. In order to provide complainants with the appropriate expertise, the Workplace Harassment Commission would be supportive of such legislative action.

Chapter 525 also required that, unless the victim objects, the Joint Committee on Legislative Ethics must refer harassment or discrimination complaints against members of the General Assembly to an outside and independent investigator. The investigator shall evaluate and investigate the complaint unless the investigator recommends dismissal. After the investigation is completed, the investigator must submit findings and recommendations to the Joint Committee on Legislative Ethics, which are relayed to the complainant. The investigation can be delayed if the matter has been referred to a prosecuting authority. State funds may not be used to settle a claim of harassment or discrimination filed against a State official or employee.

The Act requires anti-harassment policies and procedures to be updated at least once every two years in order to create and maintain an environment in which all members and employees are treated with respect and are free from unlawful discrimination and harassment. The Executive Director of the DLS must maintain electronic records of each member of the General Assembly, each General Assembly employee, and each DLS employee who completes workplace harassment prevention training. These records must be published on the General Assembly website. Chapter 525 also prohibited lobbyists from harassing or discriminating against an official, employee, intern, page, or fellow of any branch of State government; a lobbyist; or a member of the press. The State Ethics Commission is required to provide training to lobbyists on discrimination and harassment. Finally, the Act provided that a current or former member of the Workplace Harassment Commission may not serve as an outside and independent investigator.

### **Sexual Harassment Training for State Employees**

MCCR generally provides sexual harassment training to State agencies and private businesses that request such training. Chapter 791 of 2018 requires each State employee to complete at least two hours of in-person or virtual training on sexual harassment prevention within six months of the employee's initial appointment and once every two years thereafter. The training must include (1) information on laws prohibiting sexual harassment; (2) best practices in prevention and correction; (3) remedies and procedures available to victims; and (4) additional training for supervisors on properly responding to complaints and creating a workplace environment where sexual harassment is not tolerated. Each unit of State government must designate a representative to coordinate with MCCR to implement the training, and the commission must train the designated representative on the prevention of sexual harassment. The Equal Employment Opportunity (EEO) coordinator is charged with enforcing the requirements of this Act for every Executive Branch governmental unit. The EEO coordinator is authorized to recommend an audit or review of any unit that has not complied with these training requirements. Chapter 791 also prohibited a person from bringing a lawsuit against the State for training or lack of training of an employee, unless the employee's actions are willful, wanton, or grossly negligent.

### **Equal Employment Opportunity Program Reports**

Each unit of the Executive Branch of State government must submit an annual report to the EEO coordinator about the activities that the unit undertook in that fiscal year to implement the EEO program, including (1) information about personnel practices within the unit; (2) a summary of complaints filed, investigated, resolved, and pending; and (3) information about relations with other units of State government. Chapter 788 of 2018 required each Executive

Branch unit to include information about sexual harassment policies and prevention training and a summary of sexual harassment complaints filed, investigated, resolved, and pending in its annual report to the EEO coordinator.

## **Nondisclosure Agreements in Employment Contracts**

Chapters 738 and 739 of 2018 established that, except as prohibited by federal law, a provision in an employment contract, policy, or agreement that waives any substantive or procedural right or remedy to a claim that accrues in the future of sexual harassment or retaliation for reporting or asserting a right or remedy based on sexual harassment is null and void as being against the public policy of the State. The laws also required employers with 50 or more employees to submit a survey on the number of specified actions regarding sexual harassment MCCR by specified dates. MCCR must publish and make the information accessible to the public, as specified, and submit related information to the Governor and specified committees of the General Assembly.

## **Legislative Branch**

### **General Assembly and DLS Policies**

The General Assembly has had an anti-harassment policy covering its members and employees since 1993. Today, the General Assembly and DLS have very similar, yet separate policies. However, it is the policy of *both* the General Assembly and DLS that “harassment based on an individual’s race, color, religion, gender, gender identity, sexual orientation, national origin, age, disability, marital status, citizenship, sex, or any other characteristic protected by law, is prohibited.”

The policies are substantially similar, but there are differences between the policies pertaining to additional discipline options for legislators and differences in the personnel to whom harassment may be reported. Both policies specifically define “sexual harassment” as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical contact of a sexual nature, including where:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
- submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual; or
- the conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment, which is perceived by the victim to be abusive or hostile.

Both policies prohibit retaliation for reporting sexual harassment or other unlawful discrimination, and include examples of prohibited conduct, such as a range of subtle or overt behaviors that include (1) unwanted sexual advances or requests for sexual favors; (2) sexual jokes and innuendo; (3) verbal abuse of a sexual nature; (4) unwelcome commentary about an individual's body; (5) commentary about an individual's sexual prowess or sexual deficiencies; (6) leering, whistling, or touching; (7) insulting or obscene comments or gestures; (8) displaying, communicating, or distributing sexually suggestive objects, pictures, or messages in the workplace; and (9) other physical, verbal, nonverbal, or visual conduct of a sexual nature.

The policies cover the interaction of all General Assembly and DLS employees (including those who are part-time, temporary, and contractual) as well as members, interns, and pages assigned to the General Assembly. Further, the policies also cover interactions outside of the legislative complex, such as at legislative-sponsored events, professional meetings or seminars, and other activities that involve legislative business.

### **Recent Policy Changes**

Several important updates were made to the policies in 2016 and 2017. In 2016, updates to both policies (1) added a definition for "workplace harassment;" (2) added the terms "gender" and "gender identity" to the anti-discrimination statement; and (3) altered the reporting procedures to encourage individuals who witness possible incidents of harassment to report it. In 2017, LPC required all reported incidents of sexual harassment in the General Assembly to also be reported to the Human Resources Manager of DLS. The Human Resources Manager must report to LPC annually on the number of incidents made by type and resolution. In addition, General Assembly policy was modified to clarify that disciplinary action for a legislator who violates the policy may include referral to the Joint Committee on Legislative Ethics or expulsion, pursuant to the State Constitution.

On or before December 15, 2018, LPC must update the anti-harassment policies and procedures governing members and employees of the General Assembly, and include provisions prohibiting harassment of members of the press. Going forward, LPC is required to review and update anti-harassment policies and procedures at least once every two years in order to create and maintain an environment in which all members and employees are treated with respect and are free from unlawful discrimination and harassment.

LPC must adopt guidelines that are not inconsistent with law and that, for employees of DLS, govern hiring, promotion, discrimination, anti-retaliation, and a grievance procedure, among other things. LPC has adopted such guidelines. DLS must manage the personnel activities of the General Assembly as well its own employees, and carry out the rules and guidelines adopted by LPC.

## **Appendix 4. Maryland General Assembly and Department of Legislative Services Anti-harassment Policies**

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## **Maryland General Assembly Anti-Harassment Policy and Procedures**

### **I. Statement of General Assembly Policy**

The Maryland General Assembly is committed to creating and maintaining a work environment in which all members and employees are treated with respect and are free from unlawful discrimination and harassment. It is the policy of the Maryland General Assembly that harassment based on an individual's race, color, religion, gender, gender identity, sexual orientation, national origin, age, disability, marital status, citizenship, sex, or any other characteristic protected by law is prohibited.

#### **A. Workplace Harassment Prohibited**

Workplace harassment means any harassment based on any characteristic protected by law and has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. While workplace harassment includes sexual harassment, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment and is further emphasized in section B. of this policy.

#### **B. Sexual Harassment Prohibited**

Sexual harassment is a form of sex discrimination that could violate federal and State law, as well as the United States and Maryland Constitutions. Sexual harassment is illegal and is in conflict with the personnel practices and public policies of the State of Maryland. Sexual harassment by a member or employee of the Maryland General Assembly is prohibited and will not be tolerated.

Sexual harassment, for the purpose of this policy, is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical contact of a sexual nature when, for example:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment, which is perceived by the victim to be abusive or hostile.

Sexual harassment may include a range of subtle or overt behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; unwelcome commentary about an individual's body, commentary about an individual's sexual prowess or sexual deficiencies; leering, whistling or touching; insulting or obscene comments or gestures; displaying, communicating, or distributing sexually suggestive objects, pictures, or messages in the workplace; and other physical, verbal, nonverbal or visual conduct of a sexual nature.

## **II. Scope of the Policy and Individuals Covered**

This policy applies to members, regular, full-time, part-time, temporary and contractual employees of the Maryland General Assembly, as well as interns and pages assigned to the Maryland General Assembly. In addition, this policy covers the interaction of these individuals away from the legislative complex at legislative-sponsored events, professional meetings or seminars, and those activities that involve legislative business.

## **III. Procedures for reporting, investigating and resolving harassment incidents**

### **A. Reporting incidents**

Early reporting and intervention are most effective in resolving actual or perceived incidents of harassment. Therefore, the Maryland General Assembly encourages the prompt reporting of incidents or concerns so that rapid and constructive action can be taken before relationships become irreparably strained and before offensive conduct continues or escalates.

The Maryland General Assembly encourages good faith reporting of all perceived incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Individuals who believe that they have been exposed to such conduct or have witnessed such conduct should discuss their concerns with any one of the following: the Human Resources Manager of the Department of Legislative Services, the Administrative Assistant to either Presiding Officer, the Chief of Staff for the President of the Senate, or the Chief of Staff for the Speaker of the House.

Adverse actions taken in retaliation against an individual for reporting sexual harassment or other unlawful discrimination or for participating in an investigation of a claim of harassment or discrimination constitute a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action. An individual making a report shall be advised of the prohibition against retaliation at the time the individual makes the complaint. As appropriate, remedial measures will be discussed with the individual who made a report.

### **B. Investigation**

If the problem is not resolved informally to the satisfaction of the individual who made the report, the Human Resources Manager will promptly conduct an investigation of the complaint. All information will be maintained on a confidential basis to the greatest extent possible. Only those who need to know in order to accomplish the purpose of the investigation shall be provided with the identity of the complainant and the allegations. All parties, including the complainant and the alleged harasser, contacted in the course of an investigation shall be advised of the necessity of confidentiality and that any breach of confidentiality shall be treated as misconduct subject to disciplinary action.

### **C. Resolution**

In order to facilitate an appropriate resolution, any report involving a member or staff of the Maryland General Assembly will be brought to the attention of the relevant presiding officer (either the President of the Senate or the Speaker of the House) and may be brought to the attention

of the relevant minority leader. For the same reason, any report involving an employee of the Department of Legislative Services will be promptly brought to the attention of the Department's Executive Director. All reports of violations made to the individuals listed below shall also be reported promptly to the Human Resources Manager.

If the investigation supports a finding of a violation of this policy, prompt and effective remedial action will be taken. Responsive action may include, but is not limited to, training, referral to counseling or disciplinary action as determined to be appropriate under the circumstances, including referral to the Joint Committee on Legislative Ethics. Disciplinary action for a non-legislator may include, but is not limited to, warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay, termination or other punishment. For constitutional reasons, disciplinary action for a legislator may include warning, reprimand, reassignment, expulsion, or other punishment in accordance with Article III, Section 19 of the Maryland Constitution.

If the investigation does not support a finding that this policy has been violated, the individual making the report and the individual against whom the allegation was made shall be so advised. Both will be advised that retaliation for making the report is prohibited.

#### **D. Appeal**

If a party involved in the reported incident does not agree with its resolution, that party may appeal to the appropriate Presiding Officer within 10 days of receiving notice about resolution of the complaint. Within 45 days, the presiding officer or designee will render a decision on the appeal.

#### **IV. Policy Summary**

This policy reflects the strong commitment of the Maryland General Assembly to providing its members and employees with an environment free from unlawful discrimination, including sexual harassment, and from retaliation for exercising rights under this policy. The General Assembly is committed to investigating complaints of discrimination, harassment, and retaliation promptly and thoroughly, regardless of who brings them or against whom they are brought.

The Human Resources Manager is directed to report annually to the Legislative Policy Committee the number of incident reports made each year, by type of workplace harassment and resolution.

**To report violations or if you have any questions about this policy,  
see or call any of the following persons:**

**Patrick Murray**

Chief of Staff, President of the Senate  
410-841-3700

**Joy Walker**

Administrative Assistant to the President of the Senate  
410-841-3700

**Alexandra Hughes**  
Chief of Staff, Speaker of the House of Delegates  
410-841-3800

**Valerie Kwiatkowski**  
Assistant to the Speaker of the House of Delegates  
410-841-3800

**Lori Mathis**  
Human Resources Manager  
410-946-5120

Revised 1/1/18

# **Department of Legislative Services**

## **Anti-Harassment Policy and Procedures**

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### **I. Statement of Department Policy**

The Department of Legislative Services (the department) is committed to creating and maintaining a work environment in which all employees are treated with respect **and are** free from unlawful discrimination and harassment. It is the policy of the department that harassment based on an individual's race, color, religion, gender, gender identity, sexual orientation, national origin, age, disability, marital status, citizenship, sex, or any other characteristic protected by law is prohibited.

#### **A. Workplace Harassment Prohibited**

Workplace harassment means any harassment based on any characteristic protected by law and has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. While workplace harassment includes sexual harassment, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment and is further emphasized in section B. of this policy.

#### **B. Sexual Harassment Prohibited**

Sexual harassment is a form of sex discrimination that could violate federal and State law, as well as the United States and Maryland Constitutions. Sexual harassment is illegal and is in conflict with the personnel practices and public policies of the State of Maryland. Sexual harassment by an employee of the Department of Legislative Services is prohibited and will not be tolerated.

Sexual harassment, for the purpose of this policy, is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical contact of a sexual nature when, for example:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment, which is perceived by the victim to be abusive or hostile.

Sexual harassment may include a range of subtle or overt behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess, or sexual deficiencies; leering, whistling, or touching; insulting or obscene comments or gestures; displaying, communicating, or distributing sexually suggestive objects, pictures, or messages in the workplace; and other physical, verbal, nonverbal, or visual conduct of a sexual nature.

## **II. Scope of the Policy and Individuals Covered**

This policy applies to regular, full-time, part-time, and contractual employees of the department, as well as General Assembly pages. In addition, this policy covers the interaction of department employees away from the legislative complex at legislative-sponsored events, professional meetings or seminars, and those activities that involve legislative business.

## **III. Procedures for Reporting, Investigating and Resolving Harassment Incidents**

### **A. Reporting Incidents**

Early intervention is most effective in resolving actual or perceived incidents of harassment. Therefore, the department encourages individuals who believe they are being subjected to discrimination, harassment, or retaliation to promptly advise the offender that the behavior is unwelcome and request that it be discontinued. Often this action alone will resolve the problem. The department recognizes, however, that an individual may prefer not to address the alleged offender directly. If, for any reason, an individual does not wish to address the offender directly, or if such action does not successfully end the offensive conduct, the individual should promptly report the incident. The Department of Legislative Services encourages the prompt reporting of incidents or concerns so that rapid and constructive action can be taken before relationships become irreparably strained and before offensive conduct continues or escalates.

The department also encourages good-faith reporting of all perceived incidents of discrimination, harassment, or retaliation, regardless of the offender's identity or position. Individuals who believe that they have been exposed to such conduct or have witnessed such contact should discuss their concerns with a supervisor, an office director, the Human Resources Manager, or the Executive Director of the department.

Adverse actions taken in retaliation against an individual for reporting sexual harassment or other unlawful discrimination or for participating in an investigation of a claim of harassment or discrimination constitute a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action. An individual making a report shall be advised of the prohibition against retaliation at the time the individual makes the report. As appropriate, remedial measures will be discussed with the individual who made a report.

## **B. Investigation**

If the problem is not resolved informally to the satisfaction of the individual who made the report, the Human Resources Manager will promptly conduct an investigation of the report. All information will be maintained on a confidential basis to the greatest extent possible. Only those who need to know in order to accomplish the purpose of the investigation shall be provided with the identity of the complainant and the allegations. All parties, including the complainant and the alleged harasser, contacted in the course of an investigation shall be advised of the necessity of confidentiality and that any breach of confidentiality shall be treated as misconduct subject to disciplinary action.

## **C. Resolution**

If the investigation supports a finding of a violation of this policy, prompt and effective remedial action will be taken. Responsive action may include, but is not limited to, training, referral to counseling, or disciplinary action as the department determines appropriate under the circumstances. Disciplinary action may include, but is not limited to, warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay, or termination.

If the investigation does not support a finding that this policy has been violated, the individual making the complaint and the individual against whom the allegation was made shall be so advised. Both will be advised that retaliation for making the complaint is prohibited.

## **D. Appeal**

If a party involved in the reported incident does not agree with its resolution, that party may appeal by initiating a grievance at Step III in accordance with the grievance procedures adopted by the Legislative Policy Committee as described in Section 10 of the Personnel Guidelines for the Department of Legislative Services.

## **IV. Policy Summary**

This policy reflects the strong commitment of the Department of Legislative Services to providing its employees with an environment free from unlawful discrimination, including sexual harassment, and from retaliation for exercising rights under this policy. The department is committed to investigating reports of discrimination, harassment, and retaliation promptly and thoroughly, regardless of who brings them or against whom they are brought.

The Human Resources Manager is directed to report annually to the Legislative Policy Committee the number of incident reports made each year, by type of workplace harassment and resolution.

**If you have any questions about this policy,  
see or call any of the following persons:**

Victoria L. Gruber  
Executive Director  
Department of Legislative Services  
90 State Circle  
Annapolis, Maryland 21401  
(410) 946-5500

Lori L. Mathis  
Human Resources Manager  
(410) 946-5120

Ryan Bishop  
Director of Policy Analysis  
(410) 946-5200

Jackie Blocher-Moran  
OLA – Director of Quality Assurance and Professional Development  
(410) 946-5921



## Appendix 5. Resources

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Meeting with Michael Lord, Executive Director, and Kate Thompson, Assistant General Counsel, State Ethics Commission

Meeting with Julia Worcester, Natasha Mehu and Ann Ciekot, Maryland Government Relations Association

California Legislature Joint Committee on Rules, Recommendations of the Subcommittee on Sexual Harassment Prevention and Response

Delegate Ariana Kelly – Interview (conducted by Susan Russell)

Delegate Nic Kipke – Interview

Delegate Eric Bromwell – Interview

Delegate Pam Beidle – Interview

Patrick Murray, Chief of Staff to the President of the Senate – Interview (conducted by Susan Russell)

American Bar Association Commission on Women in the Profession, *Zero Tolerance: Best Practices for Combating Sex-Based Harassment in the Legal Profession*, 2018.

Anonymous. Correspondence from Department of Legislative Services Employee to commission member, Lisae C Jordan, regarding scope of commission's work and applicability to all employees.

Bacharach, Samuel B., Peter A. Bamberger, and Valerie M. McKinney. 2007. "Harassing Under the Influence: The Prevalence of Male Heavy Drinking, the Embeddedness of Permissive Workplace Drinking Norms, and the Gender Harassment of Female Coworkers." *Journal of Occupational Health Psychology*, Vol. 12, No. 3, 232–250.

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