



WORKPLACE JUSTICE

STRATEGIES FOR PREVENTING AND RESPONDING TO HARASSMENT WITHIN LEGISLATURES

Sexual harassment remains a widespread problem, affecting working people in every state, in every kind of workplace setting and industry, and at every level of employment. Our legislatures are not immune—in fact, the cultures and structures that characterize many legislative bodies make them particularly prone to harassment.

Sexual harassment is an expression of power. Power imbalances are especially acute in state legislatures, where lawmakers interact with lobbyists seeking access and support and young men and women starting their careers serving as legislative aides and interns. Male lawmakers often significantly outnumber female lawmakers, and often have more seniority and power, further exacerbating power imbalances in legislatures.

In contrast to many private workplaces, legislatures often lack a comprehensive, credible system to enable staff and others who have been harassed to report safely; to respond consistently and appropriately to complaints; to assess culpability; and to impose appropriate penalties based on fair and transparent principles that are consistently applied. Moreover, the avenues for protection and redress that do exist are often largely unknown to staff, place many obstacles in the way of those bringing complaints of harassment, and do not serve as a deterrent to offenders. There is also a failure of accountability in many legislatures, particularly where legislators settle claims with public funds and thus don't bear the financial consequences of their behavior. Across the board, harassment is frequently swept under the rug with no transparency for constituents and voters about its prevalence.

When sexual harassment infects our legislatures, it denies those targeted—the overwhelming majority of whom are

women—equal opportunities, safety, and dignity, and can block them from serving their communities and becoming leaders.

To prevent and remedy harassment and discrimination and ensure a safe and fair workplace, legislatures should consider the following strategies:

Commitment from Leadership. Harassment prevention involves changing workplace culture and practices, and that change starts at the top. Legislatures' highest leadership must make clear that harassment in any form is unacceptable and that harassers will be consistently held accountable, no matter how powerful they are. Leadership must also commit appropriate time and resources to implementing strong prevention and response strategies.

Strong Policies Addressing All Forms of Harassment and Discrimination. Although our current national reckoning is focused on sexual harassment, this is an important opportunity to strengthen efforts to address all forms of workplace harassment and discrimination based on protected statuses. Many women experience harassment based on, for example, their race and sex combined, or their national origin and sex. Sexual harassment also often occurs with other forms of discrimination, like pay discrimination. As a result, crafting policies only focused on sexual harassment limits our ability to truly address gender and racial inequality in the workplace. Any reforms to harassment policies and/or laws should extend to harassment and discrimination based on sex (including sexual orientation, gender identity, pregnancy, and childbirth), race, disability, age, ethnicity/national origin, color, religion, and other protected statuses under state law.

Protections for All Individuals Working with the Legislature. In addition to covering legislators and all legislative staff, anti-harassment protections should also extend to those who work for the legislature but may not be “employees” by some definitions, including interns, fellows,



detailees, and pages. It should also include protections and recourse for and from those who do not work for the legislature, but who interact with members and legislature staff in the course of business or due to a professional relationship, such as lobbyists and vendors.

Clear, Credible, and Confidential Reporting and Dispute Resolution Process. A common issue in many legislative bodies is that staff and other individuals do not know, understand, or trust the mechanism for receiving and resolving complaints. Many victims of harassment and assault, and bystanders who observe this behavior, do not report the behavior because they fear losing their job or otherwise hurting their career and because complaints are not taken seriously, especially when the harasser is powerful or is a high-profile individual. Legislatures must create multiple avenues for victims to report in a safe and confidential manner, and provide a well-understood, timely, credible process for reporting, investigating, and resolving complaints.

- **Staff Awareness of Mechanisms for Receiving and Resolving Complaints.** Ensure staff is aware of available complaint procedures by including information about the reporting and dispute resolution process in trainings, and posting information about workplace rights and reporting in every legislator’s office and in common areas. Provide a mechanism whereby harassment and discrimination complainants are given meaningful legal and non-legal advice and support—for example, through a counseling program.
- **Safe and Confidential Reporting.** Ensure there are multiple bodies or individuals, including an independent authority, to whom a person could report harassment and discrimination, beyond only their supervisor (who may be the harasser). And provide strong anti-retaliation and whistleblower protections to encourage reporting not only by the victims of harassment, but by bystanders as well.
- **Independent Investigators.** Use an independent authority to conduct investigations into complaints, rather than lawmakers or committee staff, to help alleviate concerns staff or others may have about the fairness and efficacy of the complaint and investigation process, and fears of retaliation for speaking up. An independent authority could be an independent entity within the legislature or government or an outside third party such as a law firm. Any independent authority tasked with conducting investigations and hearings must have the resources, authorities, and access to staff and members of the legislatures needed to do its job effectively.

Mechanisms to Promote Accountability and Transparency. Elected officials should be held to the highest ethical and professional standards and, as stewards of public trust, must be held accountable for harassment and discrimination, no matter how powerful they are. But too many legislatures have secretive or informal processes for receiving and addressing complaints of harassment by legislators and staff, often with inconsistent outcomes. Because legislators ultimately answer only to voters, secretive processes allow legislators to avoid meaningful accountability. Increasing accountability requires establishing and imposing appropriate consequences, and informing the public about the number and nature of claims against legislators and their staff, and any resolution. It also includes ensuring the legislators are not able to avoid the consequences of their behavior by using taxpayer or office funds to settle harassment or other discrimination claims.

- **Established Guidelines.** Develop guidelines that identify harassing and discriminatory conduct, the proportionate corrective actions and sanctions that may be assessed when violations are substantiated, and the process for doing so. These guidelines should be made available to the entire legislative workforce and the general public and should be fairly and consistently applied, thereby establishing expectations for behavior and promoting accountability for legislators and staff.
- **Transparency.** Track complaints and their resolution. Periodically collect and make publicly available a report that details the number of informal and formal harassment and discrimination claims asserted (regardless of whether they were resolved), the number of settlements, and total award amounts by office. Any such report must protect the identity and confidentiality of the complainant; for that reason, reporting should not occur more than once a year, and should avoid detailing the number of each type of discrimination claim filed per office per year.
- **No Public Funds to Resolve Legislator Harassment Claims.** Where taxpayer funds are used to settle a claim that a legislator has unlawfully harassed or discriminated against a legislative staff member or other individual, the legislator should personally reimburse the state treasury for funds expended on his/her behalf as expeditiously as possible. Use of office funds by legislators to pay settlement amounts should be disallowed.

Restore Power to Victims. Ensure that nondisclosure agreements are neither a prerequisite to initiating a complaint nor a mandatory condition of settlement. Some victims may want to ensure confidentiality as to these matters in order to protect themselves from retaliation or



damage to their professional reputations and job prospects, but mandating secrecy in these circumstances operates to isolate victims, shield serial predators from accountability, and allow harassment to persist in a legislature.

Written Policies and Procedures. The legislature as a whole and every member office should be required to have strong anti-discrimination and anti-harassment policies in place that help employees understand what prohibited conduct looks like; explain how to report harassment or discrimination within the office or to an independent authority, and provide multiple avenues for reporting; outline the process for investigating and responding to complaints; assure confidentiality; detail the consequences for harassment, discrimination, and retaliation; and provide internal and external resources for support, including information about the role of the independent authority. The legislature should create a model policy for member offices to adopt.

Anonymous Climate Surveys. The creation and implementation of a regular, anonymous climate survey of the legislative workforce will help offices understand the true nature and scope of harassment and discrimination that staff are experiencing, and any failures in the policies and procedures designed to prevent and address harassment and discrimination. The results of the survey should be compiled and communicated to the legislative workforce.

Effective Training. Training for all employees, including legislators and supervisors, is an essential element of a larger prevention strategy. Although some legislatures provide sexual harassment training, it often is focused solely on compliance and fails to create the necessary change in workplace culture. The following guidelines can help legislatures craft effective harassment trainings.

- **Mandatory and Frequent Trainings.** All employees and individuals protected by the harassment policies—including legislators, supervisors, lower-level employees, interns, etc.—should be required to participate in trainings. Trainings should occur frequently throughout an employee’s tenure, with an initial training upon hire and re-trainings at least annually thereafter. Lobbyists should be required to participate in sexual harassment training as part of their registration requirement.
- **Training Content That Goes Beyond Mere Compliance.** Effective training must do more than simply explain legal standards and describe behaviors that are unlawful. The content of an effective training must:
 - Be tailored to this particular workplace context;
 - Address behaviors the legislature considers unacceptable (for example, bullying) that may

escalate to unlawful harassment;

- Empower bystander intervention and ally behavior, and provide specific techniques for intervening when an employee witnesses harassment;
 - Explain how and to whom to report harassment as a target or a witness, and the reporting and investigation process;
 - Identify the consequences for engaging in harassment;
 - Identify the internal and external resources that are available to an employee who experiences or observes harassment.
- **Live and Interactive Trainings.** Many harassment trainings are not taken seriously by employees because they fail to engage employees in an interactive way that helps them acquire tools to recognize and respond to relevant workplace issues. Requiring employees to role play or problem-solve increases engagement and retention.
 - **Additional Training for Legislators and Supervisors.** As the head of their individual office and as a supervisor of their staff, legislators should receive extra training about their appropriate roles and responsibilities. Supervisors should also receive additional training about their increased responsibility under law and/or under the legislature’s policies to prevent and remedy harassment. Training should translate those duties into concrete steps that must be taken to prevent and remedy harassment, and identify the consequences for failing to do so.
 - **Some Separate Training for Staff and Legislators.** Staff members may be reluctant to reveal or discuss issues of harassment or discrimination they confront in their day-to-day work in front of senior staff or legislators for fear of retaliation, or developing a reputation for being a “troublemaker” or for “disloyalty.” At least some part of the trainings for staff should be conducted separately from those for legislators.
 - **Accountability for Participation in Mandatory Training.** Take steps to ensure that legislators and staff fulfill the mandatory training requirement. Legislatures could provide each participant who has completed the mandatory training with a certificate, and should track each person’s completion of training requirements. Legislatures also could make publicly available on the legislature’s website a list of members that have and have not completed the required training.

