

## **Vermont House of Representatives Policy for the Prevention of Discrimination 2021-2022**

It is the policy of the Vermont House of Representatives to provide a professional working environment free from discrimination. The House of Representatives prohibits both discrimination and retaliation for reporting discrimination or cooperating in an investigation of discrimination.

The House of Representatives has established a Prevention of Discrimination Panel pursuant to House Rule 90(a). The Panel shall investigate and adjudicate complaints in a manner that is fair, expeditious, and nonpartisan. This Policy for the Prevention of Discrimination (Policy) has been adopted by the House Panel and shall serve as the Policy for the House of Representatives.

This Policy regulates and sets standards concerning the conduct of Representatives and all staff who work for the House, including staff of the Office of Legislative Counsel, the Joint Fiscal Office, the Office of Legislative Information Technology, the Office of Legislative Operations, and the Office of the Sergeant at Arms (Regulated Individuals). This Policy is intended to protect legislators, staff, legislative pages and interns, and members of the public, including lobbyists, advocates, and members of the press, who experience discrimination attributable to Regulated Individuals.

### **Definition and Examples of Prohibited Behavior**

#### Discrimination

Discrimination in the workplace is illegal and all employers have an obligation to ensure a workplace free of discrimination. Discrimination means the unfair or unequal treatment of an individual based on a protected characteristic. Discrimination includes conduct that limits, segregates, or classifies an individual based on a protected characteristic in a manner that would deprive or tend to deprive the individual of opportunities related to their work in the State House or that would otherwise adversely affect the individual's status in relation to their work in the State House. Discrimination also includes workplace harassment.

#### Protected Characteristic

Protected characteristic means an individual's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition.

#### Workplace Harassment

Workplace harassment is a form of discrimination and means unwelcome conduct related to or directed toward an individual on the basis of a protected characteristic. Workplace harassment may be verbal, physical, auditory, or visual, or a combination thereof. It may be subtle or overt. Workplace harassment includes not only conduct that is unwelcome but also conduct that may be personally offensive, fail to respect the rights of others, lower morale, interfere with work effectiveness, or violate a person's sense of well-being.

Workplace harassment does not include petty slights, minor annoyances, or disappointments that an individual may encounter during their time in the State House. Workplace harassment may occur in situations in which one person has authority, or the appearance of authority, over another. Harassment may also occur between persons who are equal in terms of authority, or the appearance of authority, or between a person who has, or appears to have, less authority and another person who has, or appears to have, greater authority. The victim does not have to be the person toward whom the offensive conduct is directed but can be anyone affected by the offensive conduct.

Examples of discrimination and workplace harassment include the following when the acts or conduct relate to one or more actual or perceived protected characteristics of an individual and fall within the above definitions:

- unwanted or offensive jokes;
- slurs, epithets, or name-calling;
- mimicking or imitating the characteristics of an individual;
- hazing an individual;
- physical assaults or threats against an individual;
- intimidation, ridicule, or mockery;
- insulting or putting down an individual;
- offensive objects or pictures;
- retaliation of any kind for having filed or supported a complaint of discrimination (e.g., ostracizing the person, pressuring the person to drop or not support the complaint, or adversely altering that person's duties or work environment);
- derogatory or provocative remarks;
- interference with an individual's work performance; and
- off-duty conduct that falls within the above definitions and affects the legislative work environment.

### **Procedures and Confidentiality**

Persons who believe that a Regulated Individual has discriminated against them or who have witnessed unwelcome behavior by a Regulated Individual that they believe is a violation of this Policy have a range of options for resolution under this Policy. A person may:

- Identify objectionable conduct to the Regulated Individual.
- Informally contact a member of the Panel to seek an informal resolution.
- File a written complaint with the Panel, thereby commencing the formal Panel process.

- Obtain information about this Policy and options for resolution on a confidential basis from a member of the House serving as a Facilitator.

Each of these options is described in greater detail below. In addition, a person may pursue other avenues outside this Policy as set forth in the final section of this Policy (Other Resources). A person may choose to pursue, or not pursue, one or more of these options. For example, although an individual may identify objectionable conduct to a Regulated Individual, there is no requirement or expectation to do so. Similarly, an individual is not required to contact a Panel member informally before filing a formal written complaint.

However, there is an exception when any Regulated Individual witnesses or is made aware of discriminatory acts committed against any person who is, or appears to be, under 18 years of age. Under these circumstances, the Regulated Individual shall immediately inform the Chief of the Capitol Police Department and the Sergeant at Arms of the discrimination.

## **I. Identifying Objectionable Conduct to a Regulated Individual**

The following persons have a right to identify objectionable conduct to a Regulated Individual:

- a person (Complainant) who believes that they have been discriminated against by the Regulated Individual;
- in consultation with the (potential) Complainant, a supervisor from the Joint Fiscal Office, the Office of Legislative Counsel, the Office of Legislative Information Technology, the Office of Legislative Operations, the Sergeant at Arms, the House Clerk, or the Senate Secretary (Supervisor) who has become aware that a Regulated Individual may have violated this Policy; and
- a person who has witnessed conduct (Witness) by a Regulated Individual that may have violated the Policy.

However, there is no requirement or expectation that a Complainant, Supervisor, or Witness identify objectionable conduct to a Regulated Individual before pursuing other options for resolution.

## **II. The Informal Panel Process**

### **A. Informally Contacting a Member of the Panel**

A Complainant, Supervisor, or Witness may informally discuss an incident or conduct with any member of the Panel without initiating the formal Panel process. To the extent possible, the identity of a Complainant or Potential Complainant shall not be disclosed without the consent of the Complainant or Potential Complainant to anyone except the Panel members and staff to the Panel.

### 1. Complainant

If a Complainant approaches a Panel member to discuss an incident or conduct, the Panel member shall explain this Policy and the different options for resolution, including an informal resolution under subsection B of this section or a formal complaint pursuant to Part III (The Formal Panel Process) of this Policy. The Panel member shall also inform the Complainant that regardless of the option for resolution that is chosen, the Panel is obligated to take immediate and appropriate action to ensure that conduct that violates this Policy does not continue.

### 2. Witness

If a Witness approaches a Panel member to discuss an incident or conduct, then, based on information provided by a Witness, the Panel member shall approach the Potential Complainant to discuss the incident or conduct and to determine if the Potential Complainant would like to pursue an informal resolution under subsection B of this section or a formal complaint pursuant to Part III (The Formal Panel Process) of this Policy. The Panel member shall inform the Potential Complainant that the Panel is obligated to take immediate and appropriate action to ensure that conduct that violates this Policy does not continue.

### 3. Supervisor

A Supervisor who becomes aware that a Regulated Individual may have discriminated against a legislative employee in the Supervisor's office shall either resolve the situation within their office or inform a Panel member, or both. If a Supervisor informs a Panel member of an incident or conduct that may constitute a violation of this Policy, the Panel, in consultation with the Potential Complainant, shall resolve the situation informally pursuant to subsection B of this section or, if the Potential Complainant consents, initiate a formal complaint pursuant to Part III (The Formal Panel Process) of this Policy.

## **B. Options Regarding an Informal Resolution**

### 1. (Potential) Complainant Elects an Informal Resolution

- i. If the (Potential) Complainant gives permission for the Panel to attempt to resolve the situation informally, the Panel member shall inform the other Panel members of the incident or conduct and of the (Potential) Complainant's request that an informal resolution be attempted. The Panel shall gather information about the incident or conduct as needed. Two or more Panel members shall meet with the Regulated Individual to attempt an informal resolution. The Panel shall create a brief record of the incident or conduct, the resolution, and any additional actions taken by the Panel. The record shall be kept confidential and shall not be disclosed to anyone except a member of the Panel or the Panel's staff. The Panel members shall notify the Complainant of the results of the meeting.

- ii. Following an informal resolution, the Chair of the applicable Panel shall promptly inform the Speaker that there was an informal resolution, but not of the incident or conduct at issue or of the identity of the Complainant or the Regulated Individual, or of the Witness or Supervisor, if any.

2. (Potential) Complainant Declines Informal Resolution

- i. If the (Potential) Complainant does not wish to attempt to resolve the situation informally, the Panel member shall inform the (Potential) Complainant that the Panel member must inform the other Panel members of the incident or conduct, that the Panel may need to gather additional information, and that the Panel is obligated to take immediate and appropriate action to ensure that conduct that violates this Policy does not continue.
- ii. Following the verbal disclaimers provided pursuant to subdivision (B)(2)(i) of this section, the Panel member shall inform the other Panel members of the incident or conduct. If the Panel members determine that the incident or conduct could constitute a violation of this Policy, the Panel shall gather information about the incident or conduct as needed.

3. Preventive action

The Panel shall take immediate and appropriate action to prevent a Regulated Individual from committing further violations of this Policy after receiving a report of conduct that may constitute a violation of the Policy, such as implementing an interim safety plan.

**C. Panel Initiation of Formal Panel Process**

If, after gathering information about an incident or conduct, the Panel makes a preliminary determination that a Regulated Individual committed a violation of this Policy, the Panel may initiate its own formal complaint process against the Regulated Individual if the Complainant chooses not to pursue the formal Panel Process.

**III. The Formal Panel Process**

**A. Filing a complaint**

If a Complainant decides to pursue a formal process, the Complainant shall submit a written and signed complaint to any member of the Panel. If a Panel member other than the Chair receives a complaint, the member shall immediately notify the Chair and provide the complaint to the Chair. The complaint does not need to be in any specific format and may be written by or on behalf of the Complainant. The Complainant may either submit an electronic copy of the complaint to a member of the Panel by electronic mail or provide a signed physical copy of the complaint directly to a member of the Panel. The complaint shall include a description of the conduct at issue and identify the Regulated Individual who allegedly engaged in that conduct. A person may submit a

complaint to the Panel about a current Regulated Individual regarding conduct that allegedly occurred at any time during which the individual was a Regulated Individual, and there is no requirement or expectation that an informal resolution be attempted or completed before the person does so.

The Chair of the Panel shall promptly inform the Speaker that a complaint has been filed, but not of the identities of the Complainant and the Regulated Individual or of the alleged conduct at issue.

## **B. Procedures**

Once a written complaint has been received by the Chair, the following procedures shall be followed:

1. The Panel shall provide a copy of the complaint to the Regulated Individual alleged in the complaint to have engaged in the discriminatory conduct (Respondent). The Panel shall request that the Respondent file a response with the Panel within seven business days, a copy of which the Panel shall provide to the Complainant. The Panel may extend the time for a Respondent to file a response for good cause.
2. The Panel may choose not to take any further action on a matter at issue in a pending criminal proceeding related to the same allegation by the Complainant in which the Respondent is a defendant until either the criminal proceeding is dismissed or a decision no longer subject to appeal has been issued.
3. A Panel member who is a Complainant or Respondent in a complaint made to the Panel shall not participate in any Panel proceedings or discussions concerning that complaint. A Panel member who is a witness in a complaint may be prohibited from participating in Panel proceedings or discussions as the Panel deems appropriate.
4. If the complaint does not contain any allegations that may constitute a potential violation of this Policy, the Panel shall dismiss the complaint and notify all parties of the decision. The Chair shall notify the Speaker that the complaint has been closed, but not of the incident or conduct at issue or the identity of the Complainant or the Respondent.
5. If the complaint contains allegations that may constitute a violation of the General Assembly Policy for the Prevention of Sexual Harassment, the Panel shall identify the allegation that may constitute a violation of that policy and shall inform the Complainant of their right to submit a complaint to the appropriate panel pursuant to that Policy and of the names of the members of that panel. The Panel may also, in its discretion and with the consent of the Complainant, refer allegations that may constitute a violation of the General Assembly Policy for the Prevention of Sexual Harassment to the appropriate panel directly.
6. The Chair of the Panel shall make a written request that the Office of Legislative Counsel and any other office of the General Assembly that may have relevant records provide to the Panel any prior records involving the Complainant and the

Respondent and any other records or information that may assist the Panel in determining if a pattern exists. The Panel shall contract with an attorney or with another independent individual or entity with expertise in the area of workplace discrimination and harassment (Investigator) to investigate the allegations. The contract shall outline the scope of work to be done, including a requirement that the Investigator produce a report with a determination as to whether this Policy has been violated.

7. The Panel shall review the Investigator's report and shall make a preliminary determination as to whether the Respondent committed a violation of this Policy. The Panel shall provide a copy of the Investigator's report to the Complainant and Respondent.
  - i. If the Panel makes a preliminary determination that the Respondent did not commit a violation of this Policy, the complaint shall be closed and remain confidential.
    - I. Two or more Panel members may meet with the Complainant and Respondent, either separately or together, and shall summarize the basis for the Panel's determination.
    - II. A brief letter summarizing the Panel's action but without names or other identifying information shall be provided to the Complainant and Respondent.
    - III. The Chair shall notify the Speaker that the complaint has been closed, but not of the incident or conduct at issue or the identity of the Complainant or the Respondent.
  - ii. If the Panel makes a preliminary determination that the Respondent committed a violation of this Policy, the Panel shall meet with the Respondent and Complainant, either separately or together, and shall allow the Respondent and the Complainant to review any documents or evidence that the Panel has obtained in addition to the investigative report. The Panel shall inform the Respondent and Complainant of the basis for the Panel's determination. The Panel may do any of the following:
    - I. Issue a written warning to the Respondent. The Panel shall provide to the Complainant a brief letter summarizing the Panel's action, including a reference to the provision or provisions of the Policy that the Panel finds there are reasonable grounds to believe the Respondent violated, but without names or other identifying information. Following issuance of the written warning, the Chair shall promptly inform the Speaker of the disposition of the complaint, but not of the incident or conduct at issue or the identity of the Complainant or the Respondent.

- II. Enter into a mutually agreed to resolution with the Respondent and the Complainant. Following the parties' agreement to a resolution, the Chair shall promptly inform the Speaker of the disposition of the complaint, but not of the incident or conduct at issue or the identity of the Complainant or the Respondent.
- III. Draft and present charges and set the matter for a hearing. The Panel shall provide the Complainant and Respondent with the charges and the time, date, and location of the hearing. The Panel shall provide the Respondent with a copy of the investigative report and any other documents or evidence, and the Respondent may file an answer to the charges, a copy of which the Panel shall provide to the Complainant. After the date and time have been set for the hearing, the Chair shall promptly inform the Speaker of the incident or conduct at issue and that the Panel has drafted charges and set the matter for a hearing, but not the identity of the Complainant or the Regulated Individual. The Complainant and Respondent may jointly agree to waive the hearing at any point in the process.

## C. Hearings

### 1. General

If charges are drafted, or upon the request of the Complainant or Respondent, the Panel shall conduct a hearing.

- i. The Chair of the Panel shall preside. The Office of Legislative Counsel shall provide legal advice and assistance and the Office of Legislative Operations shall provide administrative support to the Panel.
- ii. The Investigator's report shall be presented to the Panel. The Panel may contract with the Investigator or another person to prosecute the charges and that person may present evidence, call and question witnesses, and present arguments to the Panel.
- iii. The Complainant and the Respondent may each have an individual of their choosing present to provide support at the hearing and may hire their own counsel at their own expense. Counsel, or any individual who is present to provide support, shall not be a potential witness at the hearing. The Complainant and Respondent may testify, and the Complainant and Respondent, or their attorneys, may present evidence, call and question witnesses, and present arguments to the Panel.
- iv. The Panel may conduct a single hearing with respect to multiple complaints that relate to either the same Respondent or to the same incident or series of incidents.

### 2. Setting of the hearing



The hearing shall be closed to the public unless the Respondent and Complainant both agree that it be open to the public.

### 3. Rules of procedure and evidence

The Panel shall not be bound by the Vermont Rules of Evidence and may admit any evidence that the Panel considers to be reliable, material, and relevant. The Chair shall make evidentiary rulings that may be overruled by a majority of the Panel present at the hearing. The decision of the Panel shall not be based solely on hearsay evidence.

### 4. Burden of proof

Burden of proof that a violation occurred is clear and convincing evidence. This standard indicates that the alleged violation is highly probable or reasonably certain. Evidence is “clear” if it is certain, unambiguous, and plain to the understanding; it is “convincing” if it is reasonable and persuasive enough to cause the Panel to believe it.

### 5. Outcome of hearing

- i. If the Panel finds that there is not clear and convincing evidence that a violation of this Policy occurred, it shall dismiss the complaint. The Panel shall meet with the Respondent and Complainant, either separately or together, and shall summarize the basis for the Panel’s determination. The Panel shall provide to the Respondent and Complainant a brief letter summarizing the Panel’s action but with no names or other identifying information. The Chair shall notify the Speaker that the complaint has been dismissed, but not the identity of the Complainant or the Respondent.
- ii. If the Panel finds that there is clear and convincing evidence that a violation of this Policy occurred, the Panel shall impose or recommend corrective action.
  - I. If the Respondent is a Representative, corrective action may include counseling or training, removal from a committee or committee leadership, censure, or expulsion from the House. The Panel shall impose or recommend corrective action pursuant to applicable policies and rules.
  - II. If the Respondent is the House Clerk or Sergeant at Arms, corrective action may include counseling or training, censure, or removal.
    - (aa) If the Respondent is the House Clerk, the House Panel shall recommend appropriate corrective action to the House Rules Committee. The House Rules Committee shall determine the appropriate action and may propose a resolution for House consideration imposing that action.
    - (bb) If the Respondent is the Sergeant at Arms, the Panel shall recommend appropriate corrective action to the Joint Rules

Committee. The Joint Rules Committee shall determine the appropriate action and may propose a resolution for consideration by both the House and Senate imposing that action.

- III. If the Respondent is the Chief Fiscal Officer, Director of the Office of Legislative Counsel, Director of the Office of Legislative Operations, or Director of the Office of Legislative Information Technology, corrective action may include counseling or training, reprimand, loss of pay or vacation days, demotion, or termination. The Panel shall meet with the Joint Fiscal Committee or Joint Legislative Management Committee, as applicable, and shall present its findings and recommendation for corrective action. The Joint Fiscal Committee or Joint Legislative Management Committee, as applicable, shall impose appropriate corrective action.
- IV. If the Respondent is an employee of the Speaker, House Clerk, Sergeant at Arms, Joint Fiscal Office, Office of Legislative Information Technology, Office of Legislative Operations, or Office of Legislative Counsel, recommended corrective action may include counseling or training, reprimand, loss of pay or vacation days, demotion, or termination. The House Panel shall meet with the Speaker, House Clerk, Sergeant at Arms, or head of the Joint Fiscal Office, Office of Legislative Information Technology, Office of Legislative Operations, or Office of Legislative Counsel, as applicable, and shall present its findings and recommendation for corrective action. The Speaker, House Clerk, Sergeant at Arms, or head of the Joint Fiscal Office, Office of Legislative Information Technology, Office of Legislative Operations, or Office of Legislative Counsel shall impose appropriate corrective action.
- V. After corrective action has been recommended, the Chair of the Panel shall meet with the Speaker. The Chair shall inform the Speaker of the nature of the complaint and the identities of the Complainant and of the Regulated Individual and summarize the basis for the Panel's determination and the recommended corrective action. This meeting shall not be necessary if the Speaker has previously received this information.

#### 6. Public statement

After the imposition of the following corrective actions, the Panel Chair or Speaker, as appropriate, shall issue a public statement that shall include the nature of the complaint, the identity of the Respondent, and a summary of the basis for the Panel's determination and for the corrective action:

- i. if the Respondent is a Representative, removal from a committee or committee leadership, censure, or expulsion from the House;

- ii. if the Respondent is the House Clerk or Sergeant at Arms, censure or removal;
- iii. if the Respondent is the Chief Fiscal Officer, Director of the Office of Legislative Information Technology, Director of the Office of Legislative Operations, or Director of the Office of Legislative Counsel, demotion or termination; or
- iv. if the Respondent is an employee of the Speaker, House Clerk, Sergeant at Arms, Joint Fiscal Office, Office of Legislative Information Technology, Office of Legislative Operations, or Office of Legislative Counsel, demotion or termination.

#### 7. Time periods

The Panel shall conclude any investigation and hearing and shall impose or recommend corrective action as soon as reasonably possible.

### **Confidentiality and Maintenance of Records**

#### Confidentiality

1. In order to encourage persons who believe that they have experienced discrimination attributable to a Regulated Individual to feel comfortable contacting members of the Panel and pursuing a formal Panel process, members of the Panel, the Office of Legislative Counsel, the Office of Legislative Operations, and any attorney, individual, or entity that the Panel has contracted with shall keep confidential any communications and information obtained and all records produced or acquired in accordance with this Policy except to the extent necessary to carry out an investigation of an alleged violation of the Policy or as otherwise set forth in this Policy.
2. All records produced or acquired in accordance with this Policy are not subject to the Public Records Act.

#### Maintenance of records

The Office of Legislative Counsel shall maintain all records associated with complaints or proceedings pursuant to this Policy.

### **Interns, Staff, and Volunteers Who Work for a Representative**

Any Representative who employs an intern or staff person or accepts the services of a volunteer to do legislative work shall provide the Sergeant at Arms with the name, address, and contact information for that person. If the intern, staff person, or volunteer is a minor, the Representative shall also provide the name, address, and contact information for the parent(s) or guardian(s) and shall provide additional information as the Sergeant at Arms requires.

The Sergeant at Arms shall provide every intern, staff person, or volunteer with a copy of this Policy and with contact information for the Chair of the Panel and shall ensure that the person understands how to report discrimination. If the intern, staff person, or volunteer is a minor, the Sergeant at Arms shall also provide a copy of the Policy and contact information for the Chair of the Panel to the minor's parent(s) or guardian(s).

The Sergeant at Arms shall provide the name, address, and contact information of all interns, staff persons, and volunteers and the contact information for their parent(s) or guardian(s), if applicable, to the Speaker.

### **Training and Information**

The Speaker and the Chair of the Panel shall ensure that Regulated Individuals receive training on this Policy. That training shall be open to members of the public, including lobbyists, advocates, and members of the press who may work in or be present in the State House. This Policy shall be posted on the General Assembly's website. Members of the Panel may receive additional training to assist them in carrying out their responsibilities.

### **Jurisdiction of Panel**

The Panel shall investigate and adjudicate the conduct of Regulated Individuals. If a Complainant or other person contacts a member of a Panel regarding an individual over whom the Panel does not have jurisdiction, the Panel member shall ensure that the Complainant or other person is informed about whom to contact and shall assist them in doing so.

The Office of Legislative Counsel shall provide legal advice and assistance and the Office of Legislative Operations shall provide administrative support to the Panel.

### **Annual Report**

Annually, on or before December 31, the Panel shall submit a written report to the General Assembly with information concerning the number of informal resolutions attempted by the Panel pursuant to Sec. II of this Policy, the number of formal complaints filed with the Panel pursuant to Sec. III of this Policy, and the disposition of the formal complaints. This report shall be posted on the website of the General Assembly.

### **Other Resources**

The Panel is authorized to appoint up to three members of the House to serve as Discrimination Prevention Facilitators (Facilitators) for the purpose of providing information about this Policy to members and staff on a confidential basis without initiating either the informal or formal Panel processes. A Complainant or Witness may communicate confidentially with a Facilitator at any time regarding the member's options for resolution under this Policy.

A person who pursues any of the options for resolution under this Policy does not give up the right to pursue other remedies provided by law. This Policy is not intended to preclude a person from hiring a private attorney, pursuing legal remedies, or making a complaint to:

- The Equal Employment Opportunity Commission (EEOC), John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203, tel. (800) 669-4000.
- The Vermont Human Rights Commission, 14–16 Baldwin St., Montpelier, VT 05633, tel. (800) 416-2010.
- The Vermont Attorney General, Civil Rights Unit, 109 State St., Montpelier, VT 05609, tel. (802) 828-3657.
- The Vermont State Ethics Commission, 6 Baldwin St., Room 315, Montpelier, VT 05633, tel. (802) 828-7187.