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## Sexual Harassment Prevention Policy and Procedures Report

House Subcommittee on Workplace Safety and Respect – March 26, 2018

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### Report Summary – Full report available at [mn.gov/mmb](http://mn.gov/mmb)

At the request of Governor Mark Dayton, Minnesota Management and Budget (MMB) examined statewide sexual harassment prevention policies and procedures. The report issued in January 2018 summarizes our current policies and procedures, and also provides 10 recommendations for ways to improve them.

The outcome of our assessment: Minnesota has a strong state policy prohibiting sexual harassment. However, we can do more to improve the state's workplace culture, increase consistency of sexual harassment processes, and provide state employees more resources in this area. Employees must feel safe to report incidents, confident in the responsiveness of their supervisors, and certain of a fair and effective investigation process.

In understanding how the state can improve upon current efforts, we reviewed what dynamics unique to state government present challenges in providing consistent and effective processes and procedures for sexual harassment prevention. These include:

- A large and diverse workforce of over 33,000 employees in 23 separate agencies
- A decentralized model and wide diversity of employment environments
- Whether resources are equitably distributed for prevention efforts and processing complaints
- Data privacy laws restricting transparency into the process for those who report harassment

Through our review of these challenges and the conversations we had with employees, agency leaders, and other stakeholders, we found opportunity for progress in creating a more inclusive, safe, and respectful workplace free of sexual harassment in the executive branch.

We recommend improvements through a multifaceted approach to address the complex issues of process, culture, training, and communication, all with requirements of accountability and regular re-evaluation. We identified high-level areas of improvement for both the short-term and long-term. Some recommendations are already underway, while others require further study, more resources, or both.

### Recommendations

1. Create an independent office to receive reports of sexual harassment, conduct investigations, and enforce consistent application of the policy and procedures across the executive branch.
2. Expand and routinely require multifaceted training on the sexual harassment prevention policies, procedures, and issues peripherally related to creating an inclusive and respectful workplace. The training should be entwined with a broader communication strategy to reinforce and engage employees.
3. Hire and retain more diverse senior leaders and managers, improve retention rates of women in leadership positions, and expand women in leadership roles in traditionally male-dominated career fields.

4. Implement a robust communication plan to educate and remind all employees of the sexual harassment prevention policy, procedures, and training and highlight resources available in creating a more inclusive and respectful workplace. The communication plan should specifically include a comprehensive all-employee survey with routine follow-up and evaluation of progress and a statewide communications toolkit to provide resources uniformly across all agencies.
5. Expand sexual harassment reporting options for employees, including studying the creation of an external hotline.
6. Expand resources for enhancing a culture of respect in the workplace through employee resource groups, diversity speaking engagements, and cultural competency training.
7. Update the statewide Sexual Harassment Prohibited Policy to include guidance on the roles and responsibilities of those who witness the sexual harassment of others.
8. Develop senior leadership and management accountability for the implementation of the sexual harassment prevention policy and procedures and achieving the goal of a more respectful workplace through separate management training, evaluation through reporting to the governor, measurement through performance reviews, and support the role of affirmative action officers as integral to the sexual harassment reporting process and in achieving the goals of an inclusive work environment.
9. Regularly review agency sexual harassment prevention policies, procedures, and reporting. Ensure strong internal controls by monitoring for changes and deficiencies and make adjustments when needed.
10. Propose law changes that will allow more transparency into the process for those who report sexual harassment.



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# **Sexual Harassment Prevention Policy and Procedures Report**

Review and Recommendations

January 2018

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## Table of Contents

|                                                                                    |    |
|------------------------------------------------------------------------------------|----|
| Executive Summary.....                                                             | 0  |
| Current Policy and Procedures.....                                                 | 3  |
| Considerations Unique to State Government.....                                     | 7  |
| Opportunities to Improve Consistency.....                                          | 10 |
| Research and Outreach.....                                                         | 12 |
| Recommendations.....                                                               | 14 |
| 1. Establish an Independent Office for Reporting and Investigations.....           | 14 |
| 2. Expanded and Multifaceted Statewide Training.....                               | 15 |
| 3. Support Diversity in Senior Leadership and Management Positions.....            | 17 |
| 4. Require a Robust and Recurring Statewide Communications Plan.....               | 18 |
| 5. Expand Options for Reporting.....                                               | 20 |
| 6. Expand Programs to Support Inclusive Goals.....                                 | 21 |
| 7. Add Bystander Guidance to Sexual Harassment Prohibited Policy and Training..... | 22 |
| 8. Require Accountability from Senior Leadership and Management.....               | 23 |
| 9. Require Ongoing Audits of Agency Policies and Procedures.....                   | 24 |
| 10. Provide More Transparency on Complaint Status.....                             | 25 |
| Conclusion.....                                                                    | 26 |

## Executive Summary

The State of Minnesota believes all of its employees deserve a work environment that is safe, respectful, and supportive. As the largest employer in the state, we strive to be a leader in maintaining an inclusive workplace culture and this report presents an opportunity to do just that. At the request of Governor Mark Dayton, Minnesota Management and Budget (MMB) examined statewide sexual harassment prevention policies and procedures. This report summarizes our current policies and procedures, and also provides recommendations for ways to improve them.

The outcome of our assessment: Minnesota has a strong state policy prohibiting sexual harassment. However, we can do more to improve the state's workplace culture, increase consistency of sexual harassment processes, and provide state employees more resources in this area. Employees must feel safe to report incidents, confident in the responsiveness of their supervisors, and certain of a fair and effective investigation process.

In understanding how the state can improve upon current efforts, we reviewed what dynamics unique to state government present challenges in providing consistent and effective processes and procedures for sexual harassment prevention. These include:

- A large and diverse workforce comprised of 23 separate agencies
- A decentralized model and wide diversity of employment environments, creating challenges of consistency in complaint and investigation processes
- Whether resources are equitably distributed across all agencies for prevention efforts and processing complaints
- Data privacy laws restricting transparency into the process for those who report harassment

Through our review of these challenges and the conversations we had with employees, agency leaders, and other stakeholders, we found opportunity for progress in creating a more inclusive, safe, and respectful workplace free of sexual harassment in the executive branch.

The lens through which MMB reviewed the policies, procedures, and culture surrounding sexual harassment prevention is that of our employees. Both women and men are victims of sexual harassment, leaving impacts on their professional and personal lives. Keeping their best interests in mind when creating more inclusive workplaces was the focus of our outreach and research.

In addition to a workforce culture that retains and attracts employees, a work environment free from harassment is critical in maintaining the high level of service we provide Minnesotans. The state already faces a worker shortage, an impending wave of retirements, and a high turnover rate for employees of the millennial generation.<sup>1</sup> Research shows 80 percent of employees who report sexual harassment leave the workplace within two years, regardless of the outcome of the complaint.<sup>2</sup> We must avoid this kind of unfortunate and

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<sup>1</sup> MMB reviewed data relating to voluntary employee turnover in the executive branch for 2017. That data showed that the voluntary turnover rate of the millennial generation (those born after 1985) is 13.1%. The average voluntary turnover rate for all employees is 8.8%.

<sup>2</sup> Nilofer Merchant, *The Insidious Economic Impact of Harassment*, HARV. BUS. REV. (Nov. 29, 2017), <https://hbr.org/2017/11/the-insidious-economic-impact-of-sexual-harassment>.

unnecessary turnover by doing all we can to prevent sexual harassment and provide those who report it with support and resources to be confident in the process.

This report affirms the importance of regularly reviewing our policies and procedures and making changes when needed. We recommend improvements through a multifaceted approach to address the complex issues of process, culture, training, and communication, all with requirements of accountability and regular re-evaluation. We have identified high-level areas of improvement for both the short-term and long-term. Some recommendations are already underway, while others require further study, more resources, or both. The prevention of sexual harassment in state government will be an ongoing process and we intend to prioritize this work. We hope the report and recommendations will be used by all of state government—beyond just executive branch cabinet-level agencies—and by other employers in the state, now and into the future.

## Recommendations

1. Create an independent office to receive reports of sexual harassment, conduct investigations, and enforce consistent application of the policy and procedures across the executive branch.
2. Expand and routinely require multifaceted training on the sexual harassment prevention policies, procedures, and issues peripherally related to creating an inclusive and respectful workplace. The training should be entwined with a broader communication strategy to reinforce and engage employees.
3. Hire and retain more diverse senior leaders and managers, improve retention rates of women in leadership positions, and expand women in leadership roles in traditionally male-dominated career fields.
4. Implement a robust communication plan to educate and remind all employees of the sexual harassment prevention policy, procedures, and training and highlight resources available in creating a more inclusive and respectful workplace. The communication plan should specifically include a comprehensive all-employee survey with routine follow-up and evaluation of progress and a statewide communications toolkit to provide resources uniformly across all agencies.
5. Expand sexual harassment reporting options for employees, including studying the creation of an external hotline.
6. Expand resources for enhancing a culture of respect in the workplace through employee resource groups, diversity speaking engagements, and cultural competency training.
7. Update the statewide Sexual Harassment Prohibited Policy to include guidance on the roles and responsibilities of those who witness the sexual harassment of others.
8. Develop senior leadership and management accountability for the implementation of the sexual harassment prevention policy and procedures and achieving the goal of a more respectful workplace through separate management training, evaluation through reporting to the governor, measurement through performance reviews, and support the role of affirmative action officers as integral to the sexual harassment reporting process and in achieving the goals of an inclusive work environment.
9. Regularly review agency sexual harassment prevention policies, procedures, and reporting. Ensure strong internal controls by monitoring for changes and deficiencies and make adjustments when needed.
10. Propose law changes that will allow more transparency into the process for those who report sexual harassment.

## **Report Scope**

This report summarizes current sexual harassment prevention policies, procedures, and activities of 23 cabinet level agencies in the executive branch of Minnesota's state government workforce and provides recommendations for the short and long term. The Metropolitan Council is not a cabinet level agency and is not included in the review. In the context of this review, the term "statewide" refers to the 23 cabinet level agencies. The recommendations in this report, if implemented, will also provide additional resources and support to employees of small agencies, boards, and commissions that are separate from cabinet level agencies.

Neither the judicial nor the legislative branches of state government are included in this report. We hope, however, that the report and recommendations will be useful to those separate branches.

In understanding the scope of the report, it is important to recognize the widely diverse nature of employment across the executive branch. Cabinet level agencies in the executive branch represent approximately 33,200 employees. These employees' positions and work environments vary significantly – from prisons to state parks and from laboratories to our transportation systems.

While much of our research and conversation related to this report centered on sexual harassment, we recommend that prevention of all forms of protected class harassment and discrimination be included in our efforts whenever possible to accomplish the executive branch goal of creating a more inclusive and diverse workforce.

## **Stakeholder engagement**

We appreciate the many voices that contributed to our research and this report. MMB convened a panel of executive branch agency leaders to provide insight and help formulate recommendations. We also conducted outreach to a variety of groups and stakeholders. We gathered input, advice, best practices, and recommendations from as many groups as we could in a short timeframe, and will continue the discussion on an ongoing basis. The state is fortunate to have so many leaders with expertise and experience around sexual harassment prevention and more conversations and outreach will be meaningful long into the future.

## Current Policy and Procedures

MMB began its analysis by reviewing the statewide policy prohibiting sexual harassment and its use by cabinet level agencies. Below is a summary and discussion of the policy, as well as several challenges in creating a more inclusive environment free of sexual harassment.

### Statewide Policy Prohibiting Sexual Harassment

#### *Overview*

The Commissioner of Minnesota Management and Budget, as the chief personnel and labor relations manager of the executive branch, has the authority to adopt personnel policies that apply to all employees of executive branch agencies.<sup>3</sup> Under this authority, MMB adopted the statewide Sexual Harassment Prohibited Policy.<sup>4</sup> The first version of this policy was issued in 1996, and it was substantially revised in 2016.<sup>5</sup> The policy requires adoption, dissemination, implementation, education, and enforcement by state agencies.

The objective of the policy is to create a work environment free from sexual harassment of any kind. To that end, the policy contains strong prohibitions against sexual harassment “in any form” and any form of retaliation against an individual who reports sexual harassment, or participates in an investigation concerning sexual harassment. The policy governs conduct that occurs in or that affects the workplace, or any location where public service is provided. Employees who violate the policy are subject to discipline, up to and including discharge. Supervisors who knowingly participate in, allow, or tolerate violations of the policy are subject to discipline, up to and including discharge.

The policy includes a place for employees to acknowledge they have read and understand it. Recently, MMB developed an electronic policy review program to help ensure understanding of the policy and confirm its acknowledgement on a regular basis. The electronic program is available to all agencies and agencies are in the process of implementing it for all employees.

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<sup>3</sup> See Minn. Stat. § 43A.04, subd. 1 (providing that this statutory authority does not extend to the legislative and judicial branches, other than classified employees of the Office of the Legislative Auditor).

<sup>4</sup> MINNESOTA MANAGEMENT AND BUDGET, HR/LR POLICY #1329 SEXUAL HARASSMENT PROHIBITED (Feb. 12, 2016), available at <https://mn.gov/mmb/employee-relations/laws-policies-and-rules/statewide-hr-policies/> (follow “Harassment” hyperlink).

<sup>5</sup> In addition to HR/LR Policy #1329, there is also Administrative Procedure 1.2 (“AP 1.2”) Harassment Prohibited, which was issued in 1982 and revised in 1988, and is still in effect today. AP 1.2 instructs agencies regarding their responsibility to provide a work environment free from verbal or physical harassment based on race, color, creed, religion, national origin, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, veteran status or any belief or attribute unrelated to job performance.

### ***Definition of Sexual Harassment***

The policy broadly defines “sexual harassment” as “any conduct or communication of a sexual nature which is unwelcome.”<sup>6</sup> The policy provides a non-exhaustive list of examples of sexual harassment, and stresses that the policy applies regardless of the gender of the harasser or the person being harassed. The policy’s definition of “sexual harassment” is intentionally broader than the legal definition. Unlike the legal definition, the policy’s definition does not require a showing that the conduct was severe or pervasive, nor a showing that the conduct interfered with the terms and conditions of employment of the person being harassed. As a result, the policy allows the state to take action to stop conduct that does not rise to the level of a legal violation, and does not require the level of harm that is actionable in a court of law. This allows state agencies to eliminate harassing conduct before it becomes severe or pervasive and to prevent more serious forms of harassment from occurring.

The policy prohibits sexual harassment and retaliation not only by and against state employees, but also by and against individuals who are not state employees, but who have business interactions with state employees. State agencies are directed to post the policy in a manner that can be accessed by third parties, and provides that those who are found to have violated the policy will be subject to appropriate action.

### ***Reporting Sexual Harassment***

The policy and policy-acknowledgement encourage individuals to report all incidents of sexual harassment and retaliation as soon as possible after the incident occurs. The policy identifies multiple ways to report. Individuals can report to agency supervisors; the agency’s affirmative action officer; the agency’s human resource office; and agency management, up to and including the agency commissioner. When complaints concern the agency head, the policy says complaints may be directed to MMB’s Office of Equal Opportunity, Diversity and Inclusion. The policy additionally advises that individuals are entitled to file an external complaint with the U.S. Equal Employment Opportunity Commission (EEOC), the Minnesota Department of Human Rights, or through other legal channels. Finally, the policy prohibits the filing of false complaints.

### ***Complaints of Sexual Harassment***

Through our review, MMB gathered data from cabinet level agencies on the number of sexual harassment complaints, investigations, and agency-imposed disciplinary actions from the last six years. In reviewing the numbers, it is important to recognize that drawing conclusions based on how many – or how few – complaints are recorded by employers may not relate directly to the true effectiveness of prevention policies and procedures. For example, “an employer that has an effective anti-harassment program, including an effective and safe reporting system, a thorough workplace investigation system, and proportionate corrective actions, communicates to employees by those measures that the employer takes harassment seriously. This in turn means that more employees will be likely to complain if they experience harassment or report harassment they observe.”<sup>7</sup> This positive cycle of reporting, investigating, and enforcing corrective actions can ultimately reduce

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<sup>6</sup> See HR/LR POLICY #1329 SEXUAL HARASSMENT PROHIBITED, *supra* note 4, at 2.

<sup>7</sup> U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, REPORT OF THE CO-CHAIRS OF THE EEOC SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE 34 (2016), [https://www.eeoc.gov/eeoc/task\\_force/harassment/upload/report.pdf](https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf) [hereinafter EEOC Report] (citing *Written Testimony of Michael A. Robbins*, INDUSTRY SPECIFIC HARASSMENT ISSUES, MEETING OF THE SELECT Sexual Harassment Prevention Policy and Procedures Report

the amount of harassment that occurs in a workplace.<sup>8</sup> Alternatively, if employees see no recourse in reporting sexual harassment, an employer may not have many employees who report it.

In a review of the last six years, cabinet level agencies consisting of approximately 33,200 employees have received 266 complaints. The status of those complaints is as follows:

- 37 percent were determined to be unsubstantiated after an investigation
- 7 percent were reviewed and determined to not require an investigation
- 5 percent of complaints are currently pending
- 51 percent were determined to be substantiated after an investigation

Substantiated claims could result in training, coaching, suspension, oral or written reprimand, demotion and/or discharge. The above numbers of complaints that were unsubstantiated or determined to not require an investigation included additional factors such as complaints being withdrawn, a party leaving state service, or complaints being combined due to the reports being related to the same incident and a single corrective action resulted.

**Table: Breakdown of the number of sexual harassment complaints by cabinet agency 2012-2017**

Table 1

| Cabinet Agency                                   | Complaints |
|--------------------------------------------------|------------|
| Bureau of Mediation Services                     | 0          |
| Dept. of Administration                          | 8          |
| Dept. of Agriculture                             | 1          |
| Dept. of Commerce                                | 0          |
| Dept. of Corrections                             | 73         |
| Dept. of Education                               | 1          |
| Dept. of Employment and Economic Development     | 11         |
| Dept. of Health                                  | 3          |
| Dept. of Higher Education                        | 0          |
| Dept. of Housing Finance                         | 1          |
| Dept. of Human Rights                            | 1          |
| Dept. of Human Services                          | 45         |
| Dept. of Iron Range Resources and Rehabilitation | 0          |
| Dept. of Labor and Industry                      | 2          |
| Dept. of Military Affairs (under state policy)   | 1          |
| Dept. of Natural Resources                       | 20         |
| Dept. of Public Safety                           | 22         |
| Dept. of Revenue                                 | 9          |
| Dept. of Transportation                          | 33         |

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TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE (Sept. 18, 2015),  
[https://www.eeoc.gov/eeoc/task\\_force/harassment/9-18-15/robbins.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/9-18-15/robbins.cfm)).

<sup>8</sup> *Id.* at 34.

| <b>Cabinet Agency</b>              | <b>Complaints</b> |
|------------------------------------|-------------------|
| Dept. of Veterans Affairs          | 15                |
| Minnesota Pollution Control Agency | 5                 |
| Minnesota IT Services              | 13                |
| Minnesota Management and Budget    | 2                 |
| <b>Total 23 cabinet agencies</b>   | <b>266</b>        |

Again, it is difficult to draw conclusions from this data, yet it is currently one of the only measurement tools the state has to analyze. Later in this report, MMB recommends a routine, anonymous, all-employee survey to gauge the climate and effectiveness of sexual harassment prevention efforts in all agencies. A climate survey would assess the incidence, prevalence, and perceptions of sexual harassment among employees, providing the state with more concrete information to inform changes to prevent and respond to sexual harassment.

## **Adoption of Policy by Individual Agencies**

In February 2016, MMB distributed an updated version of its Sexual Harassment Prohibited policy. The policy communicated that agencies were responsible for adopting it. The objective of requiring agency adoption of the policy is to set consistent expectations across the executive branch.

In November 2017, MMB requested copies of all agency sexual harassment policies and found inconsistencies in adoption of the MMB statewide policy. Most agencies had not yet adopted the MMB statewide policy, but instead had similar policies of their own. Of the 23 cabinet agencies, seven use the exact language of the MMB statewide policy and 16 were still using similar, but agency-specific, policies.

While the agency-specific policies are also effective, adoption of the statewide policy will assist in promoting greater consistency. As a result, MMB has recently instructed all cabinet level agencies to adopt the specific language of the statewide policy, and has implemented an electronic review and acknowledgment program to be completed by all employees. Going forward, all agencies will adopt the statewide policy and may adopt agency-specific information as an addendum.

## Considerations Unique to State Government

In reviewing the policies and procedures of the executive branch, it is important to take into account several considerations unique to state government employment. Unlike most private sector employers, by statute most state employees in cabinet level agencies can only be disciplined for just cause.<sup>9</sup> As such, agencies must comply with unique procedural steps and considerations when taking action on a complaint of sexual harassment. In addition, the executive branch must comply with statutes governing data privacy and the sharing of public employee data. The decentralized nature of Minnesota state government as a set of independent employing agencies also presents a challenge in administering a policy and procedures in a consistent manner.

### Taking Corrective Action While Guaranteeing Due Process

When sexual harassment occurs, the law and state policy require employers to take prompt and appropriate action to end the harassment and ensure it is not repeated. As government employers, particularly ones that employ employees with just-cause protections, state agencies must be careful to also satisfy the requirements of due process.

Due process entitles employees to procedural fairness. This includes notice of the employer's expectations, providing employees accused of misconduct the opportunity to tell their side of the story during a fair, thorough, and neutral investigation, proportionate discipline, and a disciplinary appeal process which includes the opportunity to confront and cross-examine witnesses.

Nearly all state employees are entitled to job protections based on due process. This means they cannot be disciplined or discharged without *just cause* – or a reason that is fair and reasonable under the circumstances. State statute provides for just cause-based discipline for most state employees.<sup>10</sup> All of the union contracts negotiated between the state and its employee unions similarly require just cause for discipline of most employees, meaning the state agency must show that it had just cause to discipline. As a result, the state uses progressive discipline, or discipline that escalates in stages upon repeat behavior.

### Difficulty in a “One Size Fits All” Approach to Discipline

A common concern of the state's sexual harassment prevention policy and procedures is the lack of consistency across state government when it comes to discipline. Consistent discipline, however, is not necessarily the primary goal when due process considerations are involved. To understand why, it is important to know that each of the 23 cabinet level agencies is its own employer that hires and disciplines its own employees, otherwise known as a separate appointing authority.<sup>11</sup> Due process considerations make a “one-size-fits-all” disciplinary

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<sup>9</sup> See Minn. Stat. § 43A.33, subd. 1 (“No permanent employee in the classified service shall be reprimanded, discharged, suspended without pay, or demoted, except for just cause.”).

<sup>10</sup> *Id.*

<sup>11</sup> See Minn. Stat. § 43A.02, subd. 5 (defining “appointing authority” as “a person or group of persons empowered by the Constitution, statute, or executive order to employ persons in or to make appointments to positions in the civil service”).

system— or a system of prescribed mandatory minimums uniformly administered across all individual, unique agencies — unworkable. To apply discipline equitably, each appointing authority must consider the fact-specific reasons for discipline, an employee’s entire tenure with the state, and any other aggravating or mitigating circumstances. Our best course is to treat similarly situated individuals similarly. However, often individuals are not similarly situated. A matter involving an employee with no disciplinary history will be treated differently to an employee with a long disciplinary history.

Ultimately, agencies must make disciplinary decisions based on the facts and circumstances presented in the individual cases before them and take measures to end the harassment and prevent future behavior, which can include disciplinary or non-disciplinary measures. In the area of sexual harassment, individual cases are very fact-specific. In addition, the analysis of whether individuals are similarly situated requires an analysis of differing disciplinary histories, job responsibilities, and roles.

## Appeals Process

Employees have the right to appeal discipline through a grievance process. The process allows employees to appeal a discipline before a neutral arbitrator or hearing officer where the agency provides evidence that it had just cause for discipline, and the employee has the opportunity to confront and cross-examine witnesses. Arbitrators have broad decision-making authority, and even in cases involving a violation of the sexual harassment policy, they are empowered to overturn discipline, reinstate discharged employees to work, and order the agency to provide back pay. Arbitration decisions are final and binding and are extremely difficult to reverse on appeal.

## The Minnesota Government Data Practices Act

The Minnesota Government Data Practices Act presents significant restrictions in the area of sexual harassment prevention.

Best practice generally favors providing complainants of sexual harassment information about whether their claims were substantiated, and what corrective measures the employer took in response to the complaint.<sup>12</sup> Maintaining communication on the process and outcome of a complaint is an important part of building trust in the process and providing meaningful feedback to individuals who report incidents of sexual harassment. The Minnesota Government Data Practices Act (“Data Practices Act”), however, presents a restriction for the executive branch to fulfill that practice since most of the data related to a complaint constitutes *private data* about the alleged harasser. Under the statute, private data cannot be shared with anyone except the person who is the subject of the data,<sup>13</sup> in this case the alleged harasser. As a result, the information cannot be shared with the person who filed the complaint.

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<sup>12</sup> U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PROMISING PRACTICES FOR PREVENTING HARASSMENT, <https://www.eeoc.gov/eeoc/publications/promising-practices.cfm> (last visited Jan. 13, 2018) (Section C explains that a strong complaint process “[i]ncludes processes to convey the resolution of the complaint to the complainant and the alleged harasser and, where appropriate and consistent with relevant legal requirements, the preventative and corrective action taken.”).

<sup>13</sup> Minn. Stat. § 13.02, subd. 12.

Other than for complaints against public officials, the Data Practices Act provides that only the following data regarding complaints against state employees is public:

1. The existence of a complaint
2. The status of a complaint (*e.g.*, under investigation, pending, closed)<sup>14</sup>
3. Final disposition of disciplinary action, together with the reasons for the action and data documenting the basis of the action<sup>15</sup>

The Data Practices Act also provides that all personnel data is private unless it is explicitly designated as public.<sup>16</sup> For example, when a complaint does not result in a final disciplinary action, the person who files the complaint is not permitted to receive information about the outcome. Often this means that after an investigation, if a complaint is found to be unsupported by evidence, or *unsubstantiated*, the information is not public data. Those who file a complaint that is unsubstantiated cannot be informed of the complaint's resolution.

For the vast majority of state employees, who are covered by collective bargaining agreements, "final disposition of disciplinary action" does not occur until and unless an arbitrator upholds the discipline. Only at this point does the discipline become public data. As a result, in most situations, agencies are unable to inform complainants about corrective action until months after the action was taken, if ever.

Later in this report, MMB recommends consideration of ways to allow for more transparency for victims of sexual harassment in the investigation and disciplinary processes.

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<sup>14</sup> Case law makes it clear that information about the nature or seriousness of a complaint is not considered part of the status of the complaint, and is not public until final disposition of disciplinary action. *Navarre v. S. Washington Cty. Sch.*, 652 N.W.2d 9 (Minn. 2002).

<sup>15</sup> Minn. Stat. § 13.43, subd. 2(4), (5).

<sup>16</sup> Minn. Stat. § 13.43, subd. 4.

## Opportunities to Improve Consistency

The commissioner of MMB, as the state's chief human resources officer, has the authority to adopt statewide policies, consider and investigate matters within its jurisdiction, and order "remedial actions consistent with law."<sup>17</sup> However, as mentioned earlier, each of the 23 cabinet level agencies is its own statutorily-created entity and employer of its own workforce. In this decentralized model, agencies are generally permitted to establish their own agency-specific policies and procedures, so long as they are consistent with statewide policies, procedures, contracts, and law. Unfortunately, the decentralized model can lead to inconsistent training, communications to employees, and investigations of complaints across the executive branch.

### Agency Leadership Involvement

Senior leaders are tasked with enormous responsibilities for running public services and institutions, responding to the statutory demands of the Legislature, and managing their staffs – sometimes in the thousands of employees. Despite extensive demands on their time and resources, encouraging a workplace environment that prevents sexual harassment and supports victims must be a priority.

The climate and culture of a workplace is set by the tone of leadership. Senior leadership in all areas of state government should consistently and regularly emphasize the collective commitment to an inclusive and respectful workplace, ensure that employees feel supported, routinely publicize the resources and processes available to all employees, report on the status of harassment prevention, communicate expectations, and hold people accountable.

In the past few months, MMB presented specialized leadership training on recognizing and preventing sexual harassment to approximately 200 members of cabinet agency leadership, and all cabinet commissioners received the training. Many agency affirmative action officers also received this training and it will be presented to agency human resources officers. MMB also implemented an electronic policy review training program to help communicate more effectively and routinely the sexual harassment prevention policy to all employees. Already we are seeing more engaged leaders and recommendations on the following pages include more tools and practices to support leaders in this area.

### *Inconsistent and Underfunded Training*

MMB recommends that all employees receive consistent, robust, and routine training on prevention of sexual harassment. The current statewide sexual harassment prevention training has room for improvement and can be more consistent. Most of the training on this subject has been decentralized, rather than centrally offered by MMB. As a result, some agencies provide regular sexual harassment prevention training and others do not. The quality of the current training varies from passive training, involving reading a document, to more active training using more effective live instructor-led sessions. The prevalence and preference of live instructor-led training by experienced trainers is uncommon on the topic of sexual harassment prevention partially because of the high costs associated with providing training this way. Also, not all audiences that should receive statewide training have received it, especially non-supervisor employees. Since 1999 all supervisors received live instructor-led statewide sexual harassment prevention training through the mandatory, MMB-provided Supervisory Core

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<sup>17</sup> Minn. Stat. § 43A.04, subd. 1(c).

training they attend during their probationary period. But the amount of ongoing sexual harassment prevention training for supervisors is inconsistent across agencies. These inconsistencies are exacerbated by scarcity of resources and an under-investment of funds devoted to paying for statewide sexual harassment prevention training.

## **Communication with Employees Differs Between Agencies**

Decentralization is a primary challenge of communicating information to all state employees throughout state government. Each agency manages its own communications efforts, with leadership driving the messages to employees. Often MMB provides templates for important communications, but each agency must then customize the message and send to staff. Methods for communication vary. While one agency may disseminate pertinent information through multiple channels (emails, flyers, one-pagers, staff meetings), another agency may choose to use fewer channels (an agency newsletter).

## **Investigations Vary by Agency**

Effective investigations are a key component in responding to allegations of sexual harassment. The only outside statewide investigatory services are offered through a master contract held by MMB. But these investigations can be costly. The availability of investigatory resources varies from agency to agency. Some agencies have trained staff dedicated to performing only investigations, and some agencies have offices of special investigations units. Other agencies employ individuals who conduct investigations along with many other job responsibilities and may not have the same level of training as other investigators. In these cases, the demands of investigatory responsibilities in addition to other competing priorities can delay the completion of an investigation. The quality of investigations also varies from agency to agency, often dependent upon the experience level of investigators and, again, competing priorities. MMB offers comprehensive investigator training, but because of limited resources, has not provided this training to sufficient numbers of investigators.

## Research and Outreach

### Summary of Research

In drafting this report, MMB conducted research to ensure that the executive branch's policies and procedures on sexual harassment prevention, and any recommendations for improvement, complied with law, aligned with current best practices, and included effective, innovative, and forward-thinking practices for preventing and correcting sexual harassment in the workplace.

MMB's research began with an in-depth review of the recent work by the U.S. Equal Employment Opportunity Commission (EEOC) on sexual harassment. MMB reviewed testimony before the EEOC and analyzed a 2016 report issued by the EEOC on workplace harassment. This report, entitled the *Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace* ("EEOC Report") provides a useful framework for evaluating existing policies and procedures and identifying areas of improvement.<sup>18</sup>

MMB also reflected upon the recent work by the University of Minnesota as part of the University President's Initiative to Prevent Sexual Misconduct. In particular, MMB reviewed the October 2, 2017 report, as well as recent updates to the University's policies.

MMB looked beyond these timely and detailed reports to also consider what other entities are doing to correct and prevent sexual harassment in the workplace. MMB reviewed the policies and practices of local governmental partners, including Ramsey County, Hennepin County, the City of St. Paul, and the City of Minneapolis. To ensure a wide range of viewpoints, MMB also studied, to the extent the information was publicly available, the policies and practices of our neighboring, contiguous states, and local private-sector businesses. Finally, MMB considered the published advice and expertise from various professional human resources organizations, such as the Society for Human Resource Management, and professional human resources and management researchers and authors.

### Summary of Outreach

The recommendations that follow are informed by the thoughtful input and unique perspectives collected through listening sessions organized with a variety of stakeholders. MMB sought to engage in as much outreach as possible in the limited timeframe allowed prior to the due date of the report. MMB will continue to seek feedback and advice going forward.

#### ***Agency Leadership***

MMB Commissioner Myron Frans convened a group of agency leaders to provide insight from across the executive branch. The panel included Department of Human Services Commissioner Emily Piper, Department of Revenue Commissioner Cynthia Bauerly, Department of Corrections Commissioner Tom Roy, Department of Public Safety Commissioner Mona Dohman, Department of Employment and Economic Development Commissioner Shawntera Hardy, and Minnesota National Guard Major General Jon Jensen. The panel provided

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<sup>18</sup> See generally, EEOC Report, *supra* note 7.

insight into the challenges faced in a variety of environments across the executive branch, as well as strategies to overcome those challenges.

In reviewing the climate and enforcement procedures around sexual harassment prevention in the workplace, MMB sought insight from Commissioner Kevin Lindsey of the Minnesota Department of Human Rights. Through his expertise enforcing the Minnesota Human Rights Act, Commissioner Lindsey provided input on best practices in multiple areas including reporting, preventing retaliation, and insight into what is happening in the broader workforce across Minnesota.

### ***Listening Sessions***

MMB also met with agency affirmative action officers, employee resources groups, and leaders of the Minnesota Council on Asian-Pacific Minnesotans, Minnesota Council on Latino Affairs, Minnesota Indian Affairs Council, Council for Minnesotans of African Heritage, State Services for the Blind, Commission of Deaf, Deafblind and Hard of Hearing Minnesotans, Ombudsman for Mental Health and Developmental Disabilities, and the Governor's Council on Developmental Disabilities.

Recognizing the important partnership of labor unions in addressing and resolving issues of process and culture around sexual harassment prevention, MMB also met with leaders of American Federation of State, County, and Municipal Employees (AFSCME) Council 5, Minnesota Association of Professional Employees (MAPE), Middle Management Association (MMA), Statewide Residential School Education Association (SRSEA), and Minnesota Government Engineers Council (MGEC).

The unique perspectives and experiences shared through these listening sessions have been invaluable in compiling this report. The input has contributed to MMB's review of challenges employees and agencies currently face in addressing sexual harassment prevention and in the development of the following recommendations.

## Recommendations

These recommendations are a result of careful review of the statewide policy, the EEOC report and research from other human resources experts, research into best practices of other public and private employers, and input from the numerous listening sessions conducted by MMB. While this list of recommendations is not exhaustive, it provides important steps to address the multifaceted challenges that arise in creating a truly inclusive, safe, and respectful workplace.

As noted previously, a critical component to fully implementing some of these recommendations is additional funding. MMB will prepare a fiscal estimate as well as proposals for any statutory changes to present to the Governor in the coming weeks. Where possible we will implement recommendations with existing resources. Some recommendations can be implemented immediately, others will take time to fully implement or may need a phased approach, and others will require further discussion and research before full implementation.

### 1. Establish an Independent Office for Reporting and Investigations

**Objective:** Apply consistent practices to the investigation of harassment complaints and reinforce a culture that encourages the reporting of such complaints by increasing confidence in the process and fairness in the outcome.

**Why:** Feedback from listening sessions indicates the need for consistent investigations across the executive branch. Currently some agencies have full investigative units, others use employees not fully trained, and some contract with third parties. We found that investigator training is done as-needed and often within an agency, and therefore investigator training is inconsistent. MMB does not audit investigative work. Because each agency operates under circumstances specific to that agency, the culture of reporting claims also may vary across the executive branch. The creation of this office provides employees with another option for reporting complaints, in addition to the current reporting options within an employee's agency.

**Vision:** A new, independent office would centralize the reporting and investigations of complaints of not only sexual harassment, but also other protected class harassment, and ethics concerns. There are several ways the office could be structured and will require further analysis. Suggested responsibilities of the office include:

- A new place to report claims, in addition to current reporting channels.
- Central office to maintain, analyze, and report data.
- Investigation resources for agencies that do not currently have them. Some larger agencies with established and effective investigation offices could retain them at the direction of this office.
- Review and investigate complaints. Substantiated complaints would be turned over to the employing agency, as the appointing authority, to determine corrective action.
- Track disciplinary outcomes and advise agencies on consistent corrective actions.
- Trained staff would be available to provide resources and information to all parties involved in a complaint, whether on the status of the complaint (in accordance with the Data Practices Act), additional outside avenues to report a complaint such as the Minnesota Department of Human Rights or the U.S. Equal Employment Opportunity Commission (EEOC), or outside resources to help employees work through issues surrounding a complaint.
- Facilitate employee contact with the State of Minnesota's Employee Assistance Program (EAP) which helps state employees and their immediate family members with a wide range of personal and workplace concerns, linking them with counselors and other resources.

MMB's research into best practices for investigations supports the conclusion that an independent office can provide objective accountability, consistency in practices, and a reduction in perceived bias:

It is critical that organizations develop effective, unbiased investigation procedures . . . .

The issue is whether organizations can find investigators that will be viewed as impartial, thereby enhancing the acceptability of their decisions . . . . Generally speaking, decisions that are rendered by persons perceived to be unbiased or impartial are viewed as more fair than decisions that are rendered by someone who observers believe was biased.<sup>19</sup>

Because organizational culture is manifested by what behaviors are formally and informally rewarded, it all comes down to accountability—and accountability must be demonstrated. An employer that has an effective anti-harassment program, including an effective and safe reporting system, a thorough workplace investigation system, and proportionate corrective actions, communicates to employees by those measures that the employer takes harassment seriously.<sup>20</sup>

The creation and staffing of this office will require a new appropriation of funds. MMB will explore whether any statutory changes would be necessary to implement the office.

## 2. Expanded and Multifaceted Statewide Training

**Objective:** Increase knowledge of the sexual harassment prevention policy, procedures, and resources available to all employees through an expanded, consistent, and routinely repeated statewide training program to create a culture of prevention and support for victims of harassment.

**Why:** Through our review, research, and outreach, no recommendation came up more often than that of expanded and consistent training. Trainings vary across cabinet level agencies and among various employee levels.

**Vision:** Expansion of statewide training must include efforts to engage employees in learning. Passive training where employees click through an online training may not provide the lasting impact needed for effective education and behavior change. Training must be linked to a broader communication strategy to reinforce and engage employees, described below. We suggest focusing on training for the three groups: (1) all employees, (2) supervisors and managers, and (3) affirmative action and human resource employees.

According to the EEOC, for sexual harassment prevention training to be effective, it must be:

- Supported at the highest levels
- Repeated and reinforced on a regular basis
- Provided to all employees at every level of the organization
- Conducted by qualified, live, and interactive trainers

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<sup>19</sup> Teri J. Elkins et al., *Organizational Sexual Harassment Investigations: Observers' Perceptions of Fairness*, J. MANAGERIAL ISSUES XX, 89–90 (2008).

<sup>20</sup> EEOC Report, *supra* note 7, at 34.

- Designed to include active participant engagement if live training is not feasible
- Routinely evaluated and modified as necessary<sup>21</sup>

Comprehensive training alone is not sufficient to stop sexual harassment. An expanded statewide anti-harassment training program must be combined with the other recommendations listed in this report. Finally, it is important to note that all training must be accessible to individuals with disabilities.

The most significant challenge to successfully implementing this recommendation is that of funding. MMB does not currently have sufficient funding to provide the comprehensive and consistent statewide training that is recognized as necessary in this report.

### ***Expanded Statewide Trainings for All Employees***

MMB currently provides some statewide sexual harassment prevention training, as well as respect in the workplace training. Below are areas of training MMB recommends expanding:

- Bystander Training. Creating a culture of prevention must involve all employees. Training for those who see, hear, or learn about the sexual harassment of another employee will provide tools and guidance in addressing harassment and showing support for the victim. Providing guidance to bystanders demonstrates a commitment to stopping sexual harassment and improves the work environment.
- Retaliation Prevention Training. Through our outreach, we repeatedly heard that one of the most pervasive concerns facing employees that experience sexual harassment is a fear of retaliation after reporting it. Retaliation can take many forms. It can be as obvious as a demotion or firing, but often it is much more subtle. Victims of harassment may be bullied, reassigned to unwanted tasks, or made to feel isolated. We heard often that employees do not want to be treated as “tattle-tales” if they report harassment. To prevent retaliation, we must better train employees in recognizing and preventing it.
- Implicit-Bias and Gender/ Cultural Competency Training. Expand training content on implicit bias to help employees understand the lens through which they interact with others to create empathy and understanding of what constitutes harassment.

### ***Additional Statewide Training for Supervisors and Managers***

Supervisors and managers need additional training on their accountability to create and maintain a work environment that does not tolerate sexual harassment or disrespect. MMB-provided training for supervisors is currently required when they are hired or promoted to a supervisor position. We recommend providing additional and more frequent statewide training for supervisors. All supervisors and managers must receive repeated and clear guidance on actions they are expected to take to prevent and remedy harassment and disrespectful conduct. They must know how to support those who submit complaints and be coached on how to create an inclusive and respectful workplace for all employees. Supervisors and managers must receive clear instructions on their affirmative duties to report harassment.

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<sup>21</sup> *Id.* at 52–53.

### ***Expanded Statewide Training for Affirmative Action and Human Resources***

Fifty-seven percent of respondents in a recent, independent survey said they trust their agency human resources department as a safe contact and resource on sexual harassment complaints.<sup>22</sup> Affirmative action and human resource employees are foundational to the comprehensive prevention of sexual harassment and must understand their responsibilities regarding prevention of sexual harassment, compliance procedures and regulations, investigation best practices, and reporting obligations. As a result, we recommend expanding statewide training options for affirmative action and human resources personnel.

### **3. Support Diversity in Senior Leadership and Management Positions**

**Objective:** Increase the recruitment and retention of women and individuals of diverse backgrounds in positions of leadership and supervisory roles to support a more inclusive culture that does not tolerate sexual harassment.

**Why:** Studies consistently show, and our listening sessions emphasized, that better representation of women in leadership positions translates into more effective prevention of sexual harassment. In the state workforce, Governor Dayton has made great strides in hiring more women and persons of color, but we would benefit from more diversity in hiring and we must retain the people we hire. In 2000, of all employees in senior leadership positions at cabinet level agencies, only 36 percent were women. Today, 52 percent of our senior leaders are women. Senior leadership positions represent approximately 1,500 of the 33,200 employees in cabinet level agencies. They are commissioners, deputy and assistant commissioners, directors, and chief executive officers, among others. Women represent almost exactly 50 percent of the total workforce of cabinet level agencies.

It is also important to increase diversity of race, culture, sexual orientation, and disability in senior leadership positions. Of the most senior leaders in agencies, women of color represent only 5 percent of these positions. In our outreach, we heard from many employees and stakeholders of the importance of leadership advocacy in setting an agency's culture of inclusion. We have heard that often the experience of mainstream heterosexual women with sexual harassment is emphasized more than the different kinds of harassment that women of diverse backgrounds face. When leadership reflects the diverse backgrounds and experiences of the workforce, agencies benefit from a greater understanding of the complexity of issues faced by the state, such as sexual harassment.

Though we have made notable gains in hiring women in leadership roles, an additional challenge has been retaining them. The turnover rate of women across the executive branch, including in leadership roles, is higher than that of men. The average turnover rate of women in leadership positions is nearly 9 percent, while it is only 6.5 percent for their male colleagues.

Finally, we must also strive to support women in leadership positions in traditionally male-dominated careers. Cabinet level agencies in the executive branch represent a very diverse workforce and this can present unique challenges in the culture around sexual harassment prevention. Career fields related to math, science, and public safety do not have the same representation of women as other areas of state government.

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<sup>22</sup> Minnesota Association of Professional Employees (MAPE) administered a survey through SurveyMonkey. 1,139 of its approximately 10,000 members provided responses. A summary report of the results was delivered to MMB.

**Vision:** Achieving this objective will require focusing our efforts on recruitment and retention. We will need to continue our work and training with human resources and affirmative action officer staff, recruiters, and hiring managers around recruiting, hiring, and retaining a more diverse and inclusive workforce.

#### **4. Require a Robust and Recurring Statewide Communications Plan**

**Objective:** Create long-term change in the culture of preventing sexual harassment in the workplace through engaging, two-way communications with employees. Administer a routine survey to gauge employee climate and understand areas for improvement. Ensure agencies have the tools they need to routinely, effectively, and consistently provide employees with information on current policy and procedure, expectations on behavior, how to report an incident, and emphasize the importance of a respectful work environment.

**Why:** A statewide level communications plan in this area would ensure that employees at different agencies and at different levels receive consistent communications on the topic of sexual harassment prevention. We also want to create a reliable gauge on whether employees feel safe and respected at work.

**Vision:** We recommend a multipronged approach to communicating with and receiving information from employees through the following tactics. We will achieve progress when we receive affirmative answers to the following questions:

- Do surveyed employees report positive change in workplace culture?
- Are employees aware of state policies prohibiting harassment and discrimination?
- Are employees aware of the process for reporting?
- Have all state employees received some form of sexual harassment prevention training?
- Are agencies using the statewide communication toolkit?
- Has each agency planned and implemented at least one internal communication campaign around harassment and discrimination prevention?
- Are state leaders engaged in agency communication efforts?

##### ***Require a Comprehensive Workplace Climate Survey with Follow-up and Evaluation***

To cultivate a workplace that is inclusive and supportive, we recommend a biennial survey to gain feedback from employees on workplace climate. A routine survey is a recommendation of not only the EEOC but also requested by many agency leaders and employees who provided input in the review process. The number of sexual harassment complaints at each agency does not provide a comprehensive, nor necessarily an accurate, picture of the challenges faced by employers in prevention. We must better understand the issues facing employees around sexual harassment to better prevent it and encourage reporting.

The survey should provide feedback on how safe employees feel in their workplace, how knowledgeable they are about the process for reporting incidents such as sexual harassment, their satisfaction with their experience reporting incidents, and how their agency can better support them, in addition to other issues to be determined. The survey will act as a barometer on the effectiveness of leadership efforts and policies and procedures.

The Minnesota Association of Professional Employees (MAPE) recently administered a survey of its members on sexual harassment in the workplace that provided compelling results to reflect upon.<sup>23</sup> The state should follow its lead and administer a comprehensive and routine survey to all employees.

### ***Develop a Statewide Communications Toolkit with Resources***

We recommend MMB develop a toolkit for agencies as a resource to communicate to their employees about sexual harassment prevention policy, procedures, and resources.

The toolkit may include:

- Template emails
- Engaging content to post on agency intranets, in newsletters, etc.
- Website and social media content, if appropriate
- Visually interesting and informative posters and digital graphics
- Frequently asked questions
- One-page documents on various topics such as the policy, training, resources, procedures, etc.
- Respectful Workplace Awareness Week planning documents and templates
- Videos to support the policy, procedures, resources, etc.

The toolkit will be available on the State of Minnesota extranet and will be updated regularly.

### ***Create a “Respectful Workplace Awareness Week”***

MMB recommends establishing an annual week focused on respectful workplace awareness and engagement. This campaign will be modeled after other successful statewide campaigns such as Fraud Prevention Week and Veterans and Service Members Appreciation Month. The campaign will offer a reminder on policy as well as information on reporting for all forms of workplace harassment and discrimination, ensuring employees know these behaviors are not tolerated.

Agencies must engage employees in new and innovative ways. Agency communications teams must create new opportunities to open the lines of communication with employees on the importance of providing a respectful work environment. By making this a reoccurring event, employees will receive a yearly reminder of employer expectations.

### ***Encourage and Coach Robust Communication of the Policy at Each Agency***

We recommend MMB train all state communications directors, human resources directors, and affirmative action officers to ensure they know their roles and expectations in communicating to employees. We would regularly gather feedback, best practices, and lessons learned, and share materials as a way of continuous improvement.

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<sup>23</sup> *Id.*

### ***Emphasize Communications and Encourage Participation of All Leadership and Managers***

From the agency head or commissioner to an employee's manager, any person in a leadership role should not only review and be familiar with all harassment and discrimination prevention policies, but also play an active role in providing information to their employees.

State leaders are expected to model respectful and inclusive behavior. When leaders are engaged in communication efforts, it signals to employees they take the issue seriously, and it ensures employees receive important information.

## **5. Expand Options for Reporting**

**Objective:** Make the avenues for reporting more accessible and create an environment where all employees feel comfortable reporting instances of harassment.

**Why:** Through our outreach, we learned the importance of ensuring employees have easy, safe, and secure methods to report incidents of harassment. As the EEOC report explains, "[e]ffective reporting systems for allegations of harassment are among the most critical elements of a holistic anti-harassment effort."<sup>24</sup> Our current policy provides multiple avenues to report an incident of sexual harassment within an agency, as well as the option to report directly to MMB if the complaint concerns an agency head. The creation of an independent office, as recommended previously, would provide an additional method. Currently, however, the existing avenues operate primarily within an agency's structure. Our outreach found that persons of color and persons with disabilities may be less likely to report instances of harassment.

**Vision:** MMB recommends studying options to expand reporting options to include:

- A range of methods
- Additional points-of-contact
- Geographic and organizational diversity

As noted by the EEOC, the reporting process's guiding principle should be to offer an accessible and well-run reporting system.<sup>25</sup> Through our research, MMB found that a variety of reporting systems demonstrates that there is no one-size-fits all solution. Operational needs and resources must be considered.<sup>26</sup> MMB recommends a study of the three issues below that may lead to the creation of additional reporting options. The study should examine options for reporting various types of misconduct, including other types of workplace protected class harassment and discrimination. Such a study would require dedicated staff time and resources, and therefore funding is necessary.

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<sup>24</sup> EEOC Report, *supra* note 7, at 40

<sup>25</sup> *Id.* at 41.

<sup>26</sup> *Id.*

### ***External, third-party reporting service***

Harassment can manifest in many forms and under circumstances that lead individuals to be reluctant to report the harassment within their agencies. Victims of harassment may fear retaliation, negative impact on work relationships, or a toxic work environment. MMB recommends exploring the feasibility and effectiveness of an outside, third-party reporting service, such as a reporting hotline or website. Large private sector employers in the Twin Cities, as well as some local governments offer such third-party reporting systems. These third-party reporting systems can encourage reports by allowing for anonymous reporting. Such a system must meet due process requirements for those accused of misconduct. If MMB explores this option, it will ensure that the systems offer equal access to individuals with disabilities.

### ***Expand accessible and multi-lingual reporting***

Reporting options must be accessible to all employees, including individuals of diverse backgrounds and individuals with disabilities. MMB's study will consider expanding multi-access reporting options, such as multi-lingual interpretive lines, MN Relay, video phone, SMS/Lync, email, TTY and Skype Language, and disability accessibility and usability.

### ***Enhance reporting by all employees***

Studies show that 71 percent of women who have experienced or witnessed sexual harassment fail to report out of fear of retaliation.<sup>27</sup> Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Ally, and Intersex (LGBTQAI) individuals may be overwhelmingly unlikely to report due to fear that their career or safety could be negatively affected.<sup>28</sup>

In light of the state's diverse workforce, MMB recommends identifying best practices to incorporate, as part of an all-employee survey, considerations on how gender, gender identity, gender expression, culture, religious beliefs, or disability may create barriers for reporting within existing reporting structures, and a study of options for addressing these and other potential barriers.

## **6. Expand Programs to Support Inclusive Goals**

**Objective:** Support a more inclusive culture to help reduce sexual harassment in the workplace.

**Why:** Often at the foundation of the causes of sexual harassment is a lack of empathy for and understanding of the victim of harassment. Those who perpetuate harassment too often do not see the impact of their behavior, nor the perspective of the victim. Through our outreach, we learned of unique efforts already occurring to encourage respectful and inclusive work environments.

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<sup>27</sup> Stephanie K. Johnson, et al., *Why We Fail to Report Sexual Harassment*, HARV. BUS. REV. (Oct. 4, 2016), <https://hbr.org/2016/10/why-we-fail-to-report-sexual-harassment> (referencing a 2015 survey).

<sup>28</sup> See NATIONAL SEXUAL VIOLENCE RESOURCE CENTER & PENNSYLVANIA COALITION AGAINST RAPE, RESEARCH BRIEF: SEXUAL VIOLENCE & INDIVIDUALS WHO IDENTIFY AS LGBTQ (2012), [http://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Research-Brief\\_Sexual-Violence-LGBTQ.pdf](http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Research-Brief_Sexual-Violence-LGBTQ.pdf). (For purposes of this report, MMB added "A" for "Ally" and "I" for "Intersex").

**Vision:** Below are three areas for expansion across all agencies.

### ***Expand Employee Resource Groups***

MMB recommends the expansion of Employee Resource Groups (ERGs) across the executive branch. ERGs are groups of employees, often from traditionally underrepresented groups, that meet to support each other in the workplace and aid agency leaders in understanding diverse perspectives on goals important to both the agency and the employees. ERGs foster dialogue to increase employee sense of belonging and investment in an organization. Currently, ERGs are organized at only a handful of agencies, however they have proven to be a useful tool. Agency leadership should not only invest in their creation, but actively engage with them on a routine basis.

### ***Increase Opportunities for Diversity Awareness***

MMB recommends the development of a “Diversity Spotlight Series” across the all agencies. MMB discovered that a few agencies organize voluntary speaking engagements on a regular basis to engage employees in conversations on diversity. The speaker is often an employee from the agency itself. The speaker highlights the perspectives and diversity their culture and background contribute to the workplace, as well as the unique challenges they face.

### ***Expand Gender and Cultural Competency Training***

MMB also recommends expanded gender and cultural competency training. Affirmative action officers from across agencies as well as leaders in Minnesota’s ethnic councils and disability councils stressed the importance of cultural competency training. Providing this training can help all employees -- in particular supervisors, human resource and affirmative action staff -- understand the unique perspectives that impact how employees respond to and report issues of sexual harassment.

## **7. Add Bystander Guidance to Sexual Harassment Prohibited Policy and Training**

**Objective:** Ensure all employees who observe the harassment of others have the tools and understanding in order to report the behavior.

**Why:** Currently, supervisors and managers are required to report sexual harassment when they become aware of it. The current Sexual Harassment Prohibited policy encourages “employees and third parties” to “report all incidents of sexual harassment.”<sup>29</sup> While this statement applies to both individuals directly experiencing sexual harassment and bystanders, we recommend that the policy contain more explicit language encouraging bystanders to report incidents.

**Vision:** All employees understand their obligation to proactively create a safe and professional work environment free of harassment. To change the culture around any acceptance of harassment, everyone in the workplace should play a role. MMB recommends providing additional guidance in the state’s sexual harassment prevention policy to clearly outline the role of *bystanders*, or those who witness or become aware of the sexual harassment of others.

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<sup>29</sup> See HR/LR POLICY #1329 SEXUAL HARASSMENT PROHIBITED, *supra* note 4, at 3.

For example, the federal policy followed by the Minnesota National Guard allows a bystander to report harassing conduct to a supervisor, who then engages the victim of harassment in a conversation to show support and explain avenues for formally reporting the incident.

A change to the policy, or a separate guidance document, should provide tools to employees on how to be an active bystander. This information would address how bystanders can recognize the signs of harassment, how to safely intervene, and options for alerting management of the behavior. As noted in the recommendation on expanding employee training, the inclusion of specific guidance for bystanders in the policy should be accompanied by regular training for all employees on how to effectively support their coworkers in this role.

## **8. Require Accountability from Senior Leadership and Management**

**Objective:** Ensure agency leadership and senior management are actively involved in creating a culture of respect by modeling visible and routine support of the sexual harassment prevention program and setting expectations that hold agency management to a high standard.

**Why:** Research shows prevention of sexual harassment and cultivating a climate of support and safety starts from the top.

**Vision:** We believe the following areas will help achieve this objective.

### ***Separate Training for Leadership and Management***

As stated previously in the recommendation on training, MMB recommends that senior leadership and all staff in management positions receive separate, leader-focused training on sexual harassment prevention. The instruction should be mandatory, repeated regularly, and include coaching on modeling behavior, support of complainants, cultural awareness, and detailed explanation of the process and policy itself. Managers must be able to have conversations with employees about sexual harassment prevention and must be at the center of creating an environment where all employees are supported and respected.

### ***Written Report Required***

Currently every two years, MMB submits the Affirmative Action Report to the Governor and the Legislature, outlining each agency's progress in accomplishing affirmative action goals.<sup>30</sup> MMB suggests that this report be renamed the "Inclusive Workplace Report" and be expanded to include a section specifically reporting on the status of efforts to prevent sexual harassment. Agency leadership, human resources staff, and affirmative action officers would be required to contribute in measuring accountability, outline current updates on best practices in prevention, and efforts going forward.

### ***Formal Update to the Governor***

Similar to other workforce reports, MMB recommends that senior leadership report to the Governor every two years on what challenges each cabinet level agency faces in the area of sexual harassment prevention and how

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<sup>30</sup> Minn. Stat. § 43A.191, subd. 3.

they are working to overcome those challenges. This level of accountability may be expanded to include a report on other forms of harassment and discrimination.

### ***Annual Performance Review Assessment***

MMB recommends that yearly performance reviews for supervisory and leadership-level employees include metrics to measure harassment response and prevention, such as whether the supervisor reviewed the sexual harassment prevention policy with supervisees. A form of certification that the employee has completed all required trainings, as well as any voluntary training, should be included in the assessment.

### ***Support Affirmative Action Officers***

State affirmative action officers help to ensure agencies comply with affirmative action, equal opportunity and anti-discrimination laws, and promote a working environment free from protected class discrimination and harassment.

Through outreach and independent research, MMB found that affirmative action officers provide another effective avenue for reporting sexual harassment. Similar to human resources staff, affirmative action officers are knowledgeable about laws and policies related to sexual harassment prevention and are equipped to support training, communication, and general leadership in creating a respectful workplace. MMB recommends that agency leadership actively enhance the role of affirmative action officers by promoting them as a resource and support their work in contributing to an inclusive work environment.

## **9. Require Ongoing Audits of Agency Policies and Procedures**

**Objective:** Ensure agencies have effective and consistent policies and procedures to prevent and correct sexual harassment.

**Why:** As explained earlier in this report, our review discovered the adoption of uniform policy language, procedures, and reporting to MMB among cabinet level agencies has been inconsistent. We also heard that multiple policies can lead to confusion for employees. The EEOC recommends that employers periodically “test” their reporting system to determine how well the system is working.

**Vision:** One way to evaluate the effectiveness of agency policies and procedures is to include them in MMB’s audit process. MMB recommends developing an audit procedure to review agencies’ sexual harassment policies, procedures, and complaint outcomes as well as those related to other legally protected statuses. Additional information could be gathered to provide more insight into complaint outcomes such as whether parties involved continue working in their positions and/or within state government after a complaint is filed.

Audits would provide technical guidance and support to help agencies correct audit findings and improve performance going forward and allow for insight into issues of consistency. MMB currently has one employee assigned to its audit program; it expects that it would need to add to its auditing staff to support this service expansion.

## 10. Provide More Transparency on Complaint Status

**Objective:** To build trust with employees – including those who file complaints – MMB recommends the state provide more information to complainants about the process and status of a complaint, investigation and outcome.

**Why:** The Data Practices Act poses restrictions in providing meaningful communication to those who report sexual harassment. The Data Practices Act provides for a limited amount of disclosure to the complainant of information that otherwise is private data on the employee accused of harassment.<sup>31</sup> There is no provision, however, for sharing data with the complainant about the outcome or findings of an investigation (substantiated or unsubstantiated), about non-disciplinary corrective action (such as coaching or performance improvement plans), or about discipline that is not yet public data.<sup>32</sup> Complainants have expressed that the lack of transparency of investigatory outcomes negatively affects complainants' experiences with the reporting and investigation process, which prevents necessary emotional processing and closure.

**Vision:** Explore ways to provide more information to the complainant about the outcome of the complaint, including exploring potential statutory changes.

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<sup>31</sup> See Minn. Stat. § 13.43, subd. 2.

<sup>32</sup> For more information, see the previous discussion regarding The Minnesota Government Data Practices Act.

## Conclusion

We hope that this review of state policies and procedures around sexual harassment serves as a roadmap in the state's efforts, spurring ongoing dialogue and lasting improvements. Ultimately, we know that implementing meaningful reforms requires increased awareness and buy-in from all state employees. The state is committed to taking the actions necessary for cultivating an inclusive and respectful workplace for all employees. Preventing sexual harassment in state government is an ongoing process that we will prioritize and hope other employers in the state do the same, now and into the future.

In the coming weeks, MMB will prepare a proposal to present to the Governor regarding statutory changes and necessary appropriation requests to implement the recommendations. By working with Governor Dayton and the Legislature, we can address the multifaceted issues related to preventing sexual harassment in the state's workforce.

With that in mind, these recommendations are one piece of our efforts to address harassment and discrimination in the workplace. Again, we appreciate all of the ideas, suggestions, and time stakeholders and employees invested in the process of this review, and we look forward to an ongoing dialogue. Continued analysis is needed to assess the progress of implementing the recommendations throughout state government.

Cabinet level agencies in the executive branch employ over 33,200 employees. These dedicated public servants come to work each day focused on bettering the lives of their fellow Minnesotans. The work outlined in this report will not be complete until every state employee has a workplace that is safe, respectful, and inclusive.

