

MINNESOTA SENATE
NONDISCRIMINATION AND
ANTI-HARASSMENT POLICY
AND PROCESS

As approved by the Senate Committee on Rules
and Administration on March 22, 2021

Purpose statement

The Minnesota Senate's objective is to create a work environment free from harassment and discrimination. Every member and employee of the Minnesota Senate is responsible for contributing to a respectful workplace. The senate does not tolerate discrimination or harassment, and every effort is made to resolve every complaint in the most effective, discrete, and restorative manner possible.

What to Do if You Believe You Have Experienced Discrimination or Harassment

~~If you believe you have experienced discrimination or harassment,~~ You have several options for dealing with that experience. Depending on your situation and personal preferences, you should feel free to pursue one or more of these options.

1. Tell the individual.

~~This should be considered~~ only if you feel comfortable, ~~this should be taken into consideration.~~ If the behavior continues, you can pursue another option below.

2. Make a complaint to a contact person.

When a complaint is made, an investigation ~~will~~ **must** be conducted pursuant to this policy. Please read the policy for more information about how to proceed with this option.

3. Seek legal advice.

You may contact the Minnesota Department of Human Rights (MDHR) at (651) 539-1100 or the Equal Employment Opportunity Commission (EEOC) at **(800) 669-4000**. You may also consult an attorney at your own expense.

Free confidential support for employees and members of the senate is available before or during the complaint process.

The **Employee Assistance Program (EAP)** is available at (651) 259-3840.

Contacting the EAP is not the same as making a complaint and will not initiate a complaint with the senate.

[Note: Recommendation #1]

Contact the Employee Assistance Program. If you are an employee of the Minnesota Senate and do not want to initiate a complaint under the Senate's Non-Discrimination and Anti-Harassment Policy or you would like confidential counseling regarding whether what you experienced was discrimination or harassment, you may contact the Employee Assistance Program (EAP). EAP services are part of your employee benefit plan, and are provided to you at no additional cost. Our EAP is managed by the State Employee Group Insurance Program (SEGIP) within Minnesota Management and Budget (MMB). The EAP services are provided by LifeMatters, which is the EAP vendor. The EAP offers support and counseling to help you with your questions or concerns about harassment or discrimination. The EAP will not initiate a report and is prohibited from disclosing what you tell them without your permission unless what you tell them indicates there is a concern about the immediate safety of an individual from very serious harm. Your EAP counselor will explain the confidentiality policy to you during your first contact with them. (See Appendix B for more information.) You may contact an EAP consultant at (651)259-3840. If you prefer to work with a LifeMatters consultant outside of MMB/SEGIP call 1-800-657-3719.

Make a complaint to a contact person. If you decide that you want to make a complaint of discrimination or harassment you may initiate your complaint with any contact person (as defined on page 1 of the policy). You should provide as much detail as necessary to conduct the complaint resolution process successfully. Once the contact person has received your complaint, they are required to report the complaint to the Director of Human Resources promptly. **Any report will lead to either an investigation or a hearing conducted by a retired judge pursuant to this policy. All complaints against members of the Senate must be investigated and any conclusions of fact and discipline imposed pursuant to the investigation may be appealed to the Senate subcommittee on ethical conduct.** An investigation will be handled as discretely as possible, but there is no guarantee that the information will be completely confidential. Any hearings must be private unless the parties agree they will be open. *Reporting discrimination and harassment is encouraged. The working environment in the Minnesota Senate will be improved if acts of discrimination and harassment are dealt with appropriately.*

Tell the individual. If you feel comfortable doing so, you may tell the person who engaged in the behavior that you believe violated this policy to stop. If the behavior does not stop after you have expressed your concerns, you should pursue other options listed here.

Seek legal advice. In addition to or instead of initiating the complaint procedure under the Senate's policy, you may file a charge of discrimination with the Minnesota Department of Human Rights (MDHR) or consult with an outside attorney. You may contact MDHR at (651)539-1100.

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**Nondiscrimination and Anti-Harassment Policy and Process of the
Minnesota Senate**

Adopted by the Senate Committee on Rules and Administration
March 25, 2019

A. NONDISCRIMINATION AND ANTI- HARASSMENT POLICY AND PROCESS OF
THE MINNESOTA SENATE

It is the policy of the Minnesota Senate to create and maintain a work environment in which all members of the Minnesota Senate, employees, and third parties are treated with dignity and respect. Members, employees, and third parties have the right to a workplace that is free from discrimination and harassment, both subtle and overt. Therefore, the Minnesota Senate will strive to eliminate discriminatory and harassing behavior in the workplace based on race; color; national origin; sex, including pregnancy; marital status; religion; creed; familial status; sexual orientation; age; disability; status about public assistance; and membership or activity in a human rights commission. The provisions of this policy shall be liberally construed and any ambiguity shall be resolved in a manner that best accomplishes this purpose. [Note: recommendation #2]

All forms of discrimination and harassment are strictly forbidden and will not be tolerated.
[Note: recommendation #6]

B. APPLICABILITY

1. This policy applies to each member and employee of the Minnesota Senate and to third parties as described in Section C, Part 1.f of this policy and applies to any interaction of these individuals in any place or activity that may affect the legislative working environment.
2. This policy applies to senate employees, including senate employees on leave from the senate, at all times whether at the workplace or away from the Capitol Complex during any activity that involves legislative business or may affect the legislative working environment.
3. This policy does not apply to the interaction of third parties that does not involve any complaint of harassment or discrimination by or against a member or employee.

C. DEFINITIONS

1. As used in this policy:

- a. "Contact person" means a person required to make a report of discrimination or harassment upon receiving a complaint of discrimination or harassment and includes:
 - i. The Director of Human Resources;
 - ii. The Majority Leader of the Senate;
 - iii. The Minority Leader of the Senate;
 - iv. The Secretary of the Senate;
 - v. The respective Chief of Staff for each Senate caucus;
 - vi. Supervisors of staff. For purposes of this definition, "supervisor" means a member of the Senate or a Senate employee who is required to attend nondiscrimination and anti-harassment training for supervisors provided under this policy; or
 - vii. Members of the Minnesota Senate.
- b. "Discrimination" means to treat a person differently based upon a person's protected characteristic, with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment, except when based on a bona fide occupational qualification.
- c. "Employee" means an employee of the Minnesota Senate. For purposes of this policy only, "employee" includes fulltime, part-time, temporary employees, voluntary interns, or any other employee of the Minnesota Senate.
- d. "Member" means a member of the Minnesota Senate.
- e. "Protected characteristic" means characteristics covered by Title VII of the Civil Rights Act of 1964 or the Minnesota Human Rights Act, or both, including: race; color; national origin; sex, including pregnancy; marital status; religion; creed; familial status; sexual orientation; age; disability; status with regard to public assistance; and membership or activity in a human rights commission.
- f. "Third party" means a member of the media, lobbyist, vendor, visitor, constituent, other state employees, and any other member of the general public who has business with or at the Minnesota Senate.
- g. "Harassment" means any unwelcome conduct that is based on a person's protected characteristic that: (1) interferes with an individual's work performance; (2) creates an intimidating, hostile, or offensive work environment; or (3) becomes a condition of continued employment. Harassment is a form of discrimination based

on a person's protected characteristic and is a violation of Title VII of the federal Civil Rights Act or Minnesota Statutes, Chapter 363A, or both. (See Appendix A for the definition of "sexual harassment" provided in Minn. Stat. 363A.03.) Examples of harassment are described in section D. of this policy. While harassment includes sexual harassment, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment. Therefore, sexual harassment warrants separate emphasis and is further described in section E. of this Policy.

- h. "Complaint" means any time an individual covered by this policy describes to a contact person, either verbally or in writing, including via text or e-mail, a potentially discriminatory or harassing experience [Note: recommendation #4]

D. EXAMPLES OF HARASSMENT

1. Offensive and unwelcome conduct constituting harassment may include, but is not limited to the following conduct, if based on a protected characteristic: offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:
 - a. The harasser can be a supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
 - b. Harassment may occur when a person is affected by offensive conduct regardless of whether the person was the target of the offensive conduct.
 - c. Harassment may occur without economic injury to, or discharge of, a person affected by harassment.
2. **Harassment covered by this policy can occur outside the senate workplace if it impacts the working environment at the senate.** [Note: recommendation #5]

E. EXAMPLES OF SEXUAL HARASSMENT

1. The following are some examples of sexual conduct or communication that may constitute sexual harassment or sexually offensive behavior:
 - a. VERBAL:
 - i. Sexual comments, compliments, innuendos, or suggestions about a person's clothing, body, or sexual activity.
 - ii. Discussing sexual topics in the workplace, such as sexual practices or preferences or telling sexual jokes or stories.
 - iii. Requesting or demanding sexual favors or suggesting that there is any connection between sexual behavior and any term or condition of employment, whether that connection be positive or negative.
 - I. Using sexual words or phrases.
 - b. NONVERBAL:
 - i. Displaying sexually explicit pictures or objects in the work area.
 - ii. Giving personal gifts of a sexual nature.
 - iii. Making sexually suggestive facial expressions or gestures.
 - iv. Making unwelcome visits to a member's, employee's, or third-party's home or hotel room.
 - v. Displaying cartoons or sending e-mails, text messages, instant messages, or notes, any of which contain sexual pictures, words, or phrases.
 - c. PHYSICAL:
 - i. Kissing, touching, patting, pinching, or intentionally brushing against a member's, employee's, or third-party's body.
 - ii. Sexual contact, intercourse, or assault.
2. The examples in paragraph 1 are illustrative of the communications and conduct that may constitute sexual harassment if unwelcome and depending upon the totality of the circumstances. In that regard, the following should be kept in mind:

- a. A single incident may or may not constitute sexual harassment.
 - b. Whether a particular action is sexual harassment will depend on the facts, and determinations will be made on a case-by-case basis.
 - c. Conduct or communications that might be welcome to one person may be unwelcome to another person. Conduct or communications that might have been welcome between two individuals at one time may become unwelcome at a later time.
 - d. Other conduct or a communication not expressly described in the examples, but which is substantially similar to the examples, may violate this policy.
3. **Harassment covered by this policy can occur outside the senate workplace if it impacts the working environment at the senate.** [Note: recommendation #5]

F. CONSENSUAL RELATIONSHIPS

1. For purposes of this policy, “consensual relationship” means either a consensual romantic or consensual sexual relationship.
2. Whether or not both parties appear to have consented to the relationship, the senate prohibits strongly discourages consensual relationships between: (1) a member and an employee; or (2) a supervisor and a subordinate employee over which the supervisor exercises administrative, supervisory, or evaluative authority or influence, except as noted.
3. If a consensual, romantic, or sexual relationship exists between an employee and another individual and subsequent events create a supervisor/supervisee or similar relationship between them, the person with evaluative or supervisory authority is required to report the relationship to their supervisor so that evaluative functions can be reassigned if possible.
4. In the case of a consensual relationship involving a member and an employee, both parties must report the relationship to their designated caucus leadership and their supervisor as applicable.
5. If there is a consensual relationship covered by this section, the senate’s non-discrimination and anti-harassment policy still applies. [Note: recommendation #15]

G. RETALIATION PROHIBITED

1. The Minnesota Senate will not tolerate retaliation, whether verbal, nonverbal, or physical, as a consequence of engaging in protected conduct as defined in this section. Retaliation constitutes harassment under this policy. Any person found to have engaged in retaliation is subject to disciplinary action consistent with this policy.
2. Retaliation is any materially adverse action against a member, employee, or third-party that is intended to punish protected conduct. For the purposes of this section, “protected conduct” includes:
 - a. opposing discrimination or harassment in the workplace;
 - b. complaining of or reporting an incident of discrimination or harassment;
 - c. participating in any investigation;
 - d. testifying in any proceeding relating to a discrimination, harassment, or retaliation complaint; or
 - e. associating with a person or group of persons who are disabled or who are of different race, color, creed, religion, sexual orientation, or national origin.
3. Materially adverse actions can be job-related or not specifically job-related. Some examples of materially adverse actions include, but are not limited to, denial of a promotion, a demotion, non-hire, denial of job benefits, suspension, discharge, or other actions that can be challenged directly as employment discrimination. Materially adverse action can also include any adverse action that could dissuade a reasonable member, employee, or third party from engaging in protected conduct.
4. If you an individual believes they have experienced retaliation under this policy, you the individual should report your their concerns to any contact person.

H. DUTIES AND RESPONSIBILITIES

1. Every member and employee of the Minnesota Senate is responsible for contributing to a respectful workplace. This includes being sensitive to inappropriate behavior, monitoring their own individual behavior and attitudes, and encouraging respect and dignity for everyone at all times.
2. **Secretary of the Senate.** In addition to any other duties and responsibilities that apply to all employees, the Secretary of the Senate has a responsibility to:
 - a. publish and post conspicuously on the **S**enate's internal and external Web sites the **S**enate's nondiscrimination and anti-harassment policy and procedures,
 - b. provide training for all staff and members to inform them about and reinforce the Senate's nondiscrimination and anti-harassment policy and procedures,
 - c. make training available annually for lobbyists and other third parties,
 - d. distribute an electronic copy of the **S**enate's nondiscrimination and anti-harassment policy to all staff and members at least once annually,
 - e. ensure that training is provided for ~~supervisors~~ contact persons on their roles and responsibilities in dealing with discrimination and harassment, and promote fair and efficient handling of all complaints.
3. **Contact persons.** In addition to any other duties and responsibilities that apply to all employees, ~~supervisors~~ contact persons, as defined in Section C, Part 1.a of this policy, have a responsibility to:
 - a. promote a ~~departmental~~ working environment free from discrimination and harassment and deal with discrimination and harassment when it is observed or reported,
 - b. respect the privacy as much as possible of all parties involved in a discrimination or harassment concern or complaint,
 - c. promptly report discrimination and harassment to the **Senate** Director of Human Resources, and
 - d. participate in mandatory nondiscrimination and anti-harassment training for supervisors at least once ~~every two years~~ a year. Supervisors contact persons are not required to attend the nondiscrimination and anti-harassment training provided for employees who are not ~~supervisors~~ contact persons. [Note: recommendation #8]
4. ~~Members and~~ **Employees** have a responsibility to:
 - a. promptly report concerns or complaints to a contact person,
 - b. respect the privacy as much as possible of all parties involved in a discrimination or harassment concern or complaint,
 - c. participate in mandatory nondiscrimination and anti-harassment training at least once every two years, and
 - d. cooperate in a timely manner with requests for information and data necessary for the

Director of Human Resources to carry out the Director's responsibilities under this policy.

5. **All forms of discrimination and harassment are strictly forbidden and will not be tolerated.** [Note: recommendation #6]

I. COMPLAINT PROCESS COMPLAINTS REGARDING DISCRIMINATION OR HARASSMENT [Note: recommendation #10]

1. **Process for complainants.** If an individual you believes you they may have experienced or witnessed any type of discrimination or harassment, the individual you have several options can:
 - a. ~~you may discuss your concern confidentially with a counselor provided through the Employee Assistance Program (see Appendix B in this policy);~~ [Note: recommendation #9]
 - b. ~~you may report your complaint directly to a contact person designated in section C, paragraph 1.a. of this policy; or~~
 - c. ~~you may consult with a private attorney or file a charge of discrimination with the Minnesota Department of Human Rights.~~
 - a. Tell the individual person if you feel comfortable;
 - b. Make a complaint to a contact person; or
 - c. Seek legal advice by consulting an attorney at you're the individual's own expense or contact the Minnesota Department of Human Rights (MDHR) or the Equal Employment Opportunity Commission (EEOC).
 - d. If you would like confidential counseling regarding whether what you was experienced was discrimination or harassment or if you an individual simply needs someone to talk to about what you are the individual is experiencing, employees and members may also contact the Employee Assistance Program (EAP). The EAP will not communicate and is prohibited from disclosing what you tell an individual tells them. You may contact aAn EAP consultant may be contacted at (651) 259-3840.
 - e. **Contacting the EAP is not the same as making a complaint and will not initiate a complaint with the senate.**
2. Employees, members, and third parties are strongly encouraged to report all incidents of harassment and discrimination. Individuals are encouraged to report incidents as soon as possible after the incident occurs.
3. If you decide to report your complaint, you If an individual decides to report a complaint, the complaint can be made to any of the following contact people:
 - The Director of Human Resources;
 - The Majority Leader of the Senate;
 - The Minority Leader of the Senate;

- The Secretary of the Senate;
 - The respective Chief of Staff for each ~~S~~senate caucus;
 - Supervisors of staff; or
 - Members of the Minnesota Senate.
4. A report or complaint can be made in person, in writing, including via text or email, or by phone. To ensure a prompt and thorough investigation of a report or complaint, the complainant may be asked to provide information in writing. Information asked may include but is not limited to:
- a. The name, department, and position of the person(s) allegedly causing the harassment or discrimination
 - b. A description of the incident(s), including the date(s), location(s), and the identity of any witnesses
 - c. The name(s) of other individuals who may have been subject to similar harassment or discrimination
 - d. What, if any, steps have been taken to stop the harassment or discrimination
 - e. Any other information the complainant believes to be relevant
- ~~5. to a contact person, you should first let the contact person know that you would like to have a confidential discussion with them about your working environment. The contact person must then promptly inform you that if you provide the contact person with any specific information that may involve discrimination or harassment, the contact person will be required to report to the Director of Human Resources about what you tell them. This policy requires the Director of Human Resources to treat this information as a complaint of discrimination or harassment. Although the complaint must be handled discreetly, the contact person cannot guarantee that the information can be kept completely confidential. The contact person must also inform you that either the person reporting the complaint (you) or the person accused in the complaint will have the right to request a hearing under section I of this policy to resolve the complaint. In addition, you must be informed that if the person accused of discrimination or harassment is a member of the Senate, the member may appeal any conclusions of fact and discipline imposed pursuant to an investigation to the Senate Subcommittee on Ethical Conduct. The contact person must also inform you that you may contact the Employee Assistance Program for support and counseling regarding what you have experienced or witnessed. You may contact the Employee Assistance Program without initiating the complaint process, and any information you provide to a counselor must be kept confidential as provided in Appendix B.~~
6. ~~If you decide that you want to provide a detailed complaint to the contact person, the~~

~~complaint must specifically describe the incident or incidents. The contact person who receives the complaint shall keep a record of the initial complaint and report it promptly to the Director of Human Resources, who in turn must contact the person accused in the complaint and inform that person of their right to proceed to a hearing under section I of this policy or to proceed with an investigation as provided in section H. This procedure also applies to complaints made by third parties. At the time the Director contacts the person accused the Director must provide the person accused with the name of the person making the complaint. [Note: recommendation #14]~~

- ~~7. The Director shall inform both parties of the right to elect a hearing on the day the decision becomes available. Within three business days after the Director of Human Resources has contacted the person accused in the complaint, either the complainant or the person accused in the complaint may decide to proceed with a hearing as provided in section I. If neither person has elected to proceed with a hearing under section I within three days after the person accused in the complaint has been contacted, the complaint shall be resolved under the procedures provided in section H. [Note: recommendation #14]~~
- ~~8. In addition to or instead of this complaint procedure, a complainant has the right to file a charge of discrimination with the Minnesota Department of Human Rights or to consult with an attorney.~~
5. **Process for contact persons.** In addition to any other duties and responsibilities that apply to all employees and members, whenever a contact person receives a report or complaint of potential discrimination, harassment, or retaliation the contact person is responsible to:
 - a. Immediately report the information received concerning potential discrimination, harassment, or retaliation to the Director of Human Resources. If the matter involves the Director of Human Resources, the contact person must report the information to Senate Counsel or the Secretary of the Senate.
 - b. A contact person must report the information regardless of whether the contact person knows or has reason to believe that someone else has already reported it.
 - c. When any individual indicates they would like to discuss concerns about the senate working environment, a contact person must promptly inform the individual that:
 - i. they are encouraged to fully disclose anything that may involve discrimination, harassment, or retaliation;
 - ii. if they disclose specific information that may involve discrimination, harassment, or retaliation, the contact person will be required to promptly report it to the Director of Human Resources who must treat the information as a complaint under this policy;
 - iii. senate policy, as well as state and federal law, prohibits retaliation against someone who makes a complaint or aids in an investigation;

- iv. any complaint would be handled confidentiality to the greatest extent possible, with information shared strictly on a need-to-know basis or as required by law;
 - v. the senate does not tolerate discrimination or harassment, and every effort is made to resolve every complaint in the most effective, discrete and restorative manner possible;
 - vi. a senate employee may contact the employee assistance program for confidential counseling at any time, whether or not they make a complaint of discrimination or harassment; and
 - vii. contacting the employee assistance program alone would not result in a complaint or investigation.
- d. Document any information about potential discrimination, harassment, or retaliation and securely retain the documentation.
 - e. Refer all questions about this policy to the Director of Human Resources or their designee.
 - f. A contact person must NOT:
 - i. discourage anyone from sharing information about possible discrimination, harassment, or retaliation;
 - ii. attempt to address discrimination, harassment, or retaliation on their own;
 - iii. disclose information about possible discrimination, harassment, or retaliation to anyone other than the Director of Human Resources or their designee;
 - iv. guarantee that a complaint can be kept completely confidential under all circumstances;
 - v. or make their own decision about whether something meets the definition of discrimination, harassment, or retaliation under this policy. Any information that could potentially involve discrimination, harassment, or retaliation must be promptly reported to the Director of Human Resources.
- [Note: recommendation #7]
- 6. **Process for Director of Human Resources.** Upon receipt of a report or complaint of potential discrimination, harassment, or retaliation the director shall:
 - a. Inform the complainant and the person accused about the complaint informal and formal resolution processes and hearing process and provide information and answer any questions either party may have. All parties to the complaint are required to respect the privacy and confidentiality, to the greatest possible extent, of all involved. Retaliation is subject to disciplinary action consistent with the policy. [Note: recommendation #14]

- b. ~~Inform If the complainant and or the person accused of their right to elects a hearing under section I of this policy, the following applies. or to proceed with an investigation as provided in section H.~~ Within three business days after the director has contacted the person accused in the complaint, either the complainant or the person accused in the complaint may decide to proceed with a hearing as provided in section L. If neither person has elected to proceed with a hearing under section L within three days after the person accused in the complaint has been contacted, the complaint shall be resolved under the procedures provided in section K.
 - e. ~~Provide information and answer any questions regarding the policy language and process.~~
 - d. Put every effort towards a timely and thorough investigation process. This includes but is not limited to taking any interim measures necessary to protect individuals from discrimination, harassment, and retaliation while conducting the investigation.
 - e. Initiate and conduct the investigation as confidentially as possible.
 - f. Remind involved parties of the importance of maintaining confidentiality in this process.
 - g. Respond timely to requests from the complainant or the person accused on the status of the complaint. [Note: recommendation #11]
7. **Process for withdrawing a complaint.** A person seeking to withdraw a complaint they made under this policy must submit a written and signed withdrawal to the Director of Human Resources. The senate reserves the right to formally investigate the complaint under this policy and impose appropriate remedies even if the complaint is withdrawn to ensure a safe workplace free from discrimination and harassment. [Working group recommendation]

J. INFORMAL RESOLUTION PROCESS FOR COMPLAINTS

1. The informal resolution process for a complaint is a structured interaction between involved parties that provides an opportunity to resolve issues in a creative, positive, and productive way when appropriate. The informal resolution process is flexible and should be tailored to the situation. In such instances when the informal process is contemplated, the Director of Human Resources shall consult with and advise the supervisor of the accused to discuss options such as coaching and counseling or oral reprimand in lieu of an investigation.
2. Participation in the informal resolution process is confidential and voluntary. If the parties agree to the informal resolution process, they are expected to participate fully and in good faith. Nonparticipation may be considered as grounds for more formalized treatment of the complaint.
3. The Director of Human Resources shall take the steps necessary to understand the complaint and find facts to determine whether the behavior occurred. The Director of Human Resources shall attempt to complete the informal resolution process within 30 days after receipt of the complaint. Remedial action such as ongoing coaching, counseling, training, or other efforts may be decided upon within the 30-day timeline but may be ongoing after that time frame has elapsed.
4. Either party to the complaint to go through the informal process may, at any point, move the complaint to the formal investigation and resolution process under this policy with written notice to the Director of Human Resources.
5. The Ssenate reserves the right to formally investigate a complaint under this policy and impose appropriate remedies.[Note: recommendation #13]

K. INVESTIGATION OF A COMPLAINT

1. If neither the complainant nor the person accused in a complaint presented to the Director of Human Resources ~~under section G, paragraph 3,~~ elects to proceed with a hearing under section L, The Director shall initiate and conduct an investigation as provided in this section when the formal process is used to resolve a complaint.
2. The Director of Human Resources, in consultation with Senate Counsel, as needed, will investigate the complaint as promptly and confidentially as possible.
3. The Director of Human Resources and any other individual assisting the Director as provided in this section may gather the following in an investigation from the complainant, the person accused, and any witnesses or coworkers:
 - a. **From the complainant:**
 - i. A description of the incident or incidents, including where and when the incident or incidents took place.
 - ii. Whether a similar incident or incidents has or have happened before.
 - iii. An explanation of how the incident or incidents affected the complainant's work.
 - iv. A statement as to how the situation should be resolved.
 - v. A description of the complainant's reaction to the incident or incidents.
 - vi. Whether there were any witnesses to the facts surrounding the incident or incidents or any other evidence of its occurrence.
 - b. **From the person accused:**
 - i. An explanation of the circumstances surrounding the complainant's allegations and a request for a response.
 - ii. Any reason why the complainant may have misunderstood the actions of the person accused by the complainant, and any explanation of possible motives for the complaint.
 - iii. Whether there were any witnesses to the incident or incidents or any other evidence surrounding the complaint.
 - iv. Any instances of similar conduct involving the complainant or the person accused.
 - v. A potential resolution to the complaint.
 - c. **From witnesses or co-workers:**

- i. What they observed.
 - ii. How they reacted to the circumstances surrounding the incident.
 - iii. What the complainant or the person accused of discrimination or harassment told them, and when the conversation occurred.
4. ~~All complaints will be investigated promptly, thoroughly, and fairly. A contact person who has received a complaint should convey the complaint to the Director of Human Resources as promptly as possible following initial notification of the complaint.~~
4. The Director shall complete the investigation of the complaint as promptly as possible after receiving the complaint. The investigation and recommendations must be completed within ~~30~~ 60 days unless the Director is granted an extension of time to investigate a complaint by designated employment law counsel from the Office of Senate Counsel, Research, and Fiscal Analysis.
5. ~~Under some circumstances, an outside individual or entity may be used to investigate the complaint and to make recommendations.~~ The Director of Human Resources, in consultation with Senate Counsel, may recommend the use of an outside individual or entity to investigate the complaint and to make recommendations. In such circumstances, the Director of Human Resources may provide information related to the complaint to the outside individual or entity conducting the investigation.
6. Following the investigation, and after any appropriate consultation, the Director of Human Resources shall inform both the complainant and the person accused of the outcome of the investigation. Resolution may include disciplinary action when appropriate.

L. HEARING PROCEDURE

1. This section applies to complaints where the person accused in the complaint is not a member of the Senate and either the complainant or the person accused has elected to request a hearing to resolve the complaint.
2. Within ten days after the Director of Human Resources has been notified of the decision to request a hearing under this section, the Director must work together with Senate Counsel to select a retired judge to conduct a hearing and resolve the complaint in accordance with the contested case procedure provided under Minnesota Statutes, sections 14.57 to 14.62, as modified by this policy. (See Appendix C) The retired judge shall have the authority to provide a schedule for the hearing. For the purposes of hearings held under this policy, the provisions of Minnesota Statutes, section 14.57, paragraph (b), are inapplicable.
3. For the purposes of hearings held under this section, the Director of Human Resources shall perform the recordkeeping and other functions assigned to the Office of Administrative Hearings under Minnesota Statutes, sections 14.57 to 14.62. Senate Counsel shall be available for process and administrative questions regarding the hearing procedure on behalf of the senate.
4. Legal counsel shall not be provided by the senate for either party to the complaint. Each party to the complaint is responsible for obtaining their own legal counsel and all related costs, if a party determines that they would like to be represented by an attorney as part of the hearing process. The attorney fees and other expenses provisions of Minnesota Statutes, section 14.62, subdivision 3, do not apply to hearings held under this policy. The senate shall be responsible for the cost of retaining a retired judge and for other costs related to the conduct of the hearings with the exception of any expert retainer fees.
5. All hearings under this section are closed to nonparticipants, unless the parties agree they will be open. Except as provided in section Q, the records kept in the course of conducting a private hearing under this section may be made available only to the parties and to Senate employees and members for the purpose of administering this policy.
6. The report of the judge selected to resolve the complaint constitutes the final resolution of the complaint, and is not subject to appeal under this policy. A copy of the report must be provided to the parties and to the Director of Human Resources. The report must include determination of the appropriate discipline, if any, necessary to resolve the complaint. The Director of Human Resources shall retain a copy of the report. [Note: recommendation #12]

M. FORMAL RESOLUTION PROCESS FOR COMPLAINTS OF A DISCRIMINATION OR HARASSMENT COMPLAINT SUBJECT TO INVESTIGATION

1. **Complaints involving employees.**

a. **Formal resolution of a complaint.**

- i. The Director of Human Resources shall consult with and advise the supervisor of the person accused subject and, as needed Senate Counsel, to determine appropriate disciplinary action.
- ii. The Director of Human Resources shall be present when the supervisor communicates the disciplinary action to the employee.
- iii. The expectation is that if the supervisor is a Senator and their discipline differs from that advice provided by the Director of Human Resources, the Senator may provide a written explanation of the reasons for the difference to the Director.
[Decision to remove language. Everyone is expected to follow the policy]
- iv. The resolution of the complaint shall be documented in the employee's personnel file, including the Senator's written explanation of reasons.
- v. Disciplinary action may include but is not limited to an apology, oral reprimand and/or direction to stop, written warning, training, counseling, transfer, suspension with or without pay or termination.

- b. **Appeal process for employees.** The complainant and the accused shall be informed of the results of the investigation. Within ten business days after such communication, the complainant or person accused may appeal the conclusions, but not the findings, made as result of the investigation. The appeal shall be made in writing to the Director of Human Resources, who will submit the appeal to a neutral third party within from outside the senate with expertise in employment law disputes who was not involved in the initial investigation and any recommendations or corrective action to review the investigation to determine if it is satisfactory or if further action is required. The party requesting the appeal may provide the neutral party with additional documentation or information evidence that may or may not result in additional findings or a change to the conclusions of the investigation, or both. Upon completion of the appeal process, the Director of Human Resources shall inform both parties and appropriate supervisors of the results. [Note: recommendation #12]

2. **Complaints involving members of the senate**

- a. For resolution of a complaint involving a member of the Ssenate, the Director of Human Resources may consult with Senate Counsel and an outside entity for assistance with an investigation. If the Director determines after completion of the investigation that a member of the Ssenate has violated this policy, the Director shall inform the Majority Leader and Minority Leader. The leader of the caucus that includes the member shall consult with the leader of the other caucus to determine

the appropriate disciplinary action. Appropriate disciplinary action may include, but is not limited to, an apology, direction to stop the offensive conduct, counseling or training, an oral or written warning, suspension or removal from a leadership position within a caucus, or further proceedings under Senate Rule 55 necessary for the Senate to impose discipline.

- b. **Appeal process for a member.** Disciplinary action may not be imposed under this paragraph until the member who is determined to have violated this policy has been given five days, excluding Saturdays, Sundays, and legal holidays, to decide whether to appeal the determination to the Senate Subcommittee on Ethical Conduct. If the member chooses to appeal, discipline may not be imposed unless it is pursuant to proceedings before the Senate Subcommittee on Ethical Conduct and any subsequent action by the Committee on Rules and Administration or the Senate.
 - c. A leader administering discipline under this paragraph shall promptly inform the other leader of the terms of the discipline after it is imposed. If the other leader believes further discipline is necessary, the other leader may file a complaint under Senate Rule 55.5, paragraph (b).
 - d. If the majority leader, minority leader, or the Director of Human Resources is named in the investigation, that individual must withdraw from any further involvement under this section. If a leader withdraws, the authority provided in this section shall be exercised by a member of the Senate designated by that leader to serve in this capacity by January 2 of each year, no later than January 1 of each odd-numbered year. If the Director is required to withdraw, the Secretary of the Senate or a designee shall perform the duties required of the director under this policy for the investigation involving the director. The Director of Human Resources shall keep a record of the designations required under this section.
- 3. Complaints involving third parties.** The senate recognizes that it has limited authority to compel third parties to participate in investigations or to discipline third parties for harassment and discrimination. However, the senate will investigate reports and complaints involving third parties to the best of its ability and will take reasonable action within its power to stop harassment and discrimination by or against members or employees in the course of their work with third parties. Disciplinary action against a third party who is found to have violated this policy includes any appropriate action authorized by law, including a protective order, removal from or denying access to legislative buildings or activities, and notifying the individual's employer or clients.
- [Note: recommendations #3 and #18]
4. If the offensive behavior does not stop or reoccurs after a complaint is resolved, an additional complaint may be brought to the Director of Human Resources.
 5. Each complaint shall be promptly resolved in a manner that best ensures a workplace free from harassment, discrimination, and retaliation. This includes complaints involving third parties. Resolution may include training, coaching, discipline, apology, reparations, reassignment, added supervision, supportive measures, alteration of work protocols, reorganization, redistribution of duties, or other remedies as appropriate. [Note: recommendation #16]

N. FALSE COMPLAINTS

Complaints of discrimination or harassment that are knowingly false or that are made in reckless disregard of whether they are false will not be tolerated. Any person making a complaint of this nature is subject to disciplinary action consistent with this policy.

O. TRAINING REQUIREMENTS

1. Nondiscrimination and anti-harassment training is mandatory for all employees and members of the Senate. Attendance at trainings will be documented and attendance records will be maintained for employees and members by the Director of Human Resources. Failure to meet nondiscrimination and anti-harassment training requirements may result in disciplinary action.
2. ~~Supervisors~~ All Contact persons must attend nondiscrimination and anti-harassment training ~~provided for supervisors at least once every two years~~ annually.
[Note: recommendation #8]
3. Employees ~~and members~~ must attend nondiscrimination and anti-harassment training at least once every two years. New employees and newly elected members shall attend training when offered following their initial employment or election to the Senate.

P. CONFIDENTIALITY OF COMPLAINTS AND RESOLUTIONS

- ~~1. Investigation and resolution of complaints of discrimination and harassment will be handled as confidentially as practical. For the investigation process to be done properly, however, complete confidentiality cannot be guaranteed. Information related to an investigation of a complaint will only be shared on a need to know basis as provided in this policy and in accordance with legal obligations applicable to the Senate, including Senate policies and Senate Rules.~~
1. Confidentiality will be protected to the greatest possible extent. Information about persons who report discrimination or harassment, persons accused, and persons who aid in investigations, will be shared strictly on a need-to-know basis and as required by law. However, complete confidentiality cannot be guaranteed.
2. In accordance with this policy regarding confidentiality, if a complaint involves multiple complainants, you will only be informed of a resolution with regard to your complaint and not the resolution of complaints brought by others.

[Note: recommendation #17]

Q. RECORDKEEPING

1. ~~Complaints of discrimination and harassment will be investigated and handled as information shared with those having a need to know and in accordance with the law. The contact person for a discrimination or harassment complaint shall retain written documentation arising from the initial complaint.~~ Except as otherwise provided in this policy, all notes and other records obtained by a contact person through the complaint and/or investigation process shall be provided to and retained by the Director of Human Resources and not disclosed.
2. Records of discrimination and harassment complaints and investigations under this policy are not public.
 - a. ~~Disclosure of the investigative report to the complainant and the person accused is permissible. To the extent that any information regarding a complaint or investigation is made available to the public by the senate, it must be in summary form and/or redacted as necessary to protect the privacy of employees, the parties involved subjects, and witnesses.~~ [Note: recommendation #17]
 - a. After the investigation or hearing provided under this policy has been completed, a complainant or a person accused of discrimination or harassment may make the investigative report or report resolving a hearing-pursuant to this policy available for public inspection in order to support a contention that an allegation of discrimination or harassment is true or false.

R. REVIEW OF POLICY AND RECOMMENDATIONS

By September 1 of each even-numbered year, the Secretary of the Senate must consult with the Director of Human Resources and Senate Counsel to determine whether any changes to this policy should be recommended to the Senate. The recommendations, or a statement that no recommendations are needed, must be presented to the majority leader and the minority leader no later than October 1 of each even-numbered year.

S. ANNUAL REPORT

By February 1 of each year, the Director of Human Resources shall compile information on the number of discrimination and harassment complaints filed, substantiated, and hearings and investigations completed within the previous calendar year, and the amount spent, if any, on retaining outside entities for investigation of claims. This information shall be reported to the Secretary of the Senate, the Majority Leader, and the Minority Leader. Information regarding specific complaints is confidential and will not be disclosed in the report or made available to the public unless specifically authorized under the terms of this policy. A copy of the report must be filed with the Legislative Reference Library on the same day it is delivered.

T. QUESTIONS

If you have any questions about this policy, see or call:

Nicole Miner, Director of Human Resources
State Capitol, G-10
(651) 296-9321

Carlton Doyle Fontaine, Senate Employment Law Counsel
Senate Counsel, Research, and Fiscal Analysis
Minnesota Senate Building, Suite 3300
(651) 296-439

APPENDIX A

MINNESOTA HUMAN RIGHTS ACT DEFINITION OF SEXUAL HARASSMENT

The Minnesota Human Rights Act defines sexual harassment as:

"Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature when:

- 1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
- 2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- 3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer knows or should know the existence of the harassment and fails to take timely and appropriate action.

[Minnesota Statutes, Section 363A.03, subdivision 43]

APPENDIX B

EMPLOYEE ASSISTANCE PROGRAM (EAP) SUPPORT FOR THOSE WHO HAVE OR MAY HAVE BEEN SEXUALLY HARASSED

Your Employee Assistance Program (EAP) provides 24/7 personal, confidential counseling services as part of your employee benefit plan. EAP services are provided to you at no additional cost. EAP services are delivered by an independent contracted vendor. The EAP contract is managed by the State Employee Group Insurance Program at Minnesota Management and Budget.

Employees may use EAP as a resource to help them sort through their thoughts, feelings, and decisions regarding experiences of sexual harassment. EAP is available to help employees come to their own decisions about how to proceed.

Because it is a confidential service, EAP will not report harassment. The EAP will not share anything about anyone's situation without their permission except as required by law. Furthermore, employees may call EAP anonymously. Counselors explain EAP's confidentiality policy to every caller.

If an employee wants to report sexual harassment, the employee should follow the complaint process described in the Senate's Nondiscrimination and Anti-Harassment Policy. EAP is not part of any harassment reporting process and is not a replacement for the **S**enate's reporting procedures.

APPENDIX C
CONTESTED CASE PROCEDURES UNDER
MINNESOTA STATUTES, SECTIONS 14.57 TO 14.62

14.57 INITIATION; DECISIONS; AGREEMENT TO ARBITRATE.

- a) An agency shall initiate a contested case proceeding when one is required by law. Unless otherwise provided by law, an agency shall decide a contested case only in accordance with the contested case procedures of the Administrative Procedure Act. Upon initiation of a contested case proceeding, an agency may, by order, provide that the report or order of the administrative law judge constitutes the final decision in the case.
- b) As an alternative to initiating or continuing with a contested case proceeding, the parties, subsequent to agency approval, may enter into a written agreement to submit the issues raised to arbitration by an administrative law judge according to Minnesota Statutes, sections 572B.01 to 572B.31.

14.58 NOTICE AND HEARING.

In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved, but if, by reason of the nature of the case, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. Prior to assignment of a case to an administrative law judge as provided by sections [14.48](#) to [14.56](#), all papers shall be filed with the agency. Subsequent to assignment of the case, the agency shall certify the official record to the Office of Administrative Hearings, and thereafter, all papers shall be filed with that office. The agency and any other party to a contested case may file all necessary notices, documents, and other necessary information with the Office of Administrative Hearings by any reliable method of electronic transmission in the manner approved by that office. The Office of Administrative Hearings shall maintain the official record which shall include subsequent filings, testimony and exhibits. All filings are deemed effective upon receipt. The record shall contain a written transcript of the hearing only if preparation of a transcript is requested by the agency, a party, or the chief administrative law judge. The agency or party requesting a transcript shall bear the cost of preparation. When the chief administrative law judge requests preparation of the transcript, the agency shall bear the cost of preparation. Upon issuance of the administrative law judge's report, the official record shall be certified to the agency.

14.59 INFORMAL DISPOSITION.

Informal disposition may also be made of any contested case by arbitration, stipulation, agreed settlement, consent order or default.

14.60 EVIDENCE IN CONTESTED CASE HEARINGS.

Subdivision 1. **Admissibility.** In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial and repetitious evidence.

Subd. 2. **Made part of record.** All evidence, including records and documents containing information classified by law as not public, in the possession of the agency of which it desires to avail itself or which is offered into evidence by a party to a contested case proceeding, shall be made a part of the hearing record of the case. No factual information or evidence shall be considered in the determination of the case unless it is part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. When the hearing record contains information which is not public, the administrative law judge or the agency may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record.

Subd. 3. **Cross-examination of witness.** Every party or agency shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

Subd. 4. **Official notice.** Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified in writing either before or during hearing, or by reference in preliminary reports or otherwise, or by oral statement in the record, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record.

14.61 FINAL DECISION IN CONTESTED CASE.

Subdivision 1. **Filing of exceptions.** In all contested cases the decision of the officials of the agency who are to render the final decision shall not be made until the report of the administrative law judge as required by sections [14.48](#) to [14.56](#), has been made available to parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision. This section does not apply to a contested case under which the report or order of the administrative law judge constitutes the final decision in the case.

Subd. 2. **Closure of record.** In all contested cases where officials of the agency render the final decision, the contested case record must close upon the filing of any exceptions to the report and presentation of argument under subdivision 1 or upon expiration of the deadline for doing so. The agency shall notify the parties and the presiding administrative law judge of the date when the hearing record closed. In all contested

cases where the report or order of the administrative law judge constitutes the final decision in the case, the hearing record must close as ordered in writing by the presiding administrative law judge.

14.62 DECISIONS, ORDERS.

Subdivision 1. **Writing required.** Every decision and order rendered by an agency in a contested case shall be in writing, shall be based on the record and shall include the agency's findings of fact and conclusions on all material issues. A decision or order that rejects or modifies a finding of fact, conclusion, or recommendation contained in the report of the administrative law judge required under sections [14.48](#) to [14.56](#), must include the reasons for each rejection or modification. A copy of the decision and order shall be served upon each party or the party's representative and the administrative law judge by first class mail.

Subd. 2. [Repealed, [2002 c 251 s 7](#)]

Subd. 2a. **Administrative law judge decision final; exception.** Unless otherwise provided by law, the report or order of the administrative law judge constitutes the final decision in the case unless the agency modifies or rejects it under subdivision 1 within 90 days after the record of the proceeding closes under section [14.61](#). When the agency fails to act within 90 days on a licensing case, the agency must return the record of the proceeding to the administrative law judge for consideration of disciplinary action. In all contested cases where the report or order of the administrative law judge constitutes the final decision in the case, the administrative law judge shall issue findings of fact, conclusions, and an order within 90 days after the hearing record closes under section [14.61](#). Upon a showing of good cause by a party or the agency, the chief administrative law judge may order a reasonable extension of either of the two 90-day deadlines specified in this subdivision.

Subd. 3. **Award of fees and other expenses.** Fees and expenses must be awarded as provided in sections [15.471](#) to [15.474](#).

Subd. 4. **Applicability.** This section does not apply to a contested case under which the report or order of the administrative law judge constitutes the final decision in the case.