

Arizona House of Representatives Policy on Workplace Harassment

What is the House Policy?

Within six months of being hired, elected, or appointed, all House members and employees are required by law to attend an ethics class. Statute refers to this class as the “Public Service Orientation Program.”

The purpose of ethics training is to ensure that the work environment of the House is free of harassment. All employees and members should be pleased to come to work every day and should never be fearful or concerned about the work environment.

Any employee or member of the House who violates this policy is subject to corrective action. This policy has been developed to prevent harassment, and to ensure that complaints are investigated and resolved quickly and in a manner that is fair to all.

The House will not permit conduct that includes, but is not limited to, the following:

Discrimination: Unequal and unlawful treatment of an individual, or unwelcome, verbal, written physical conduct, or electronic communication that either degrades or shows hostility or aversion towards a person, arising because of that person's inclusion in one of the categories protected by state or federal civil rights laws.

Sexual Harassment: Sexual discrimination that violates Title VII of the Civil Rights Act of 1964 and/or the protections in state statute, title 41, chapter 9, Arizona Revised Statutes. Sexual harassment can take different forms:

- 1) *Unwelcome sexual advances* or suggestions, demands, or requests for sexual favors, or other verbal or physical harassment that is inherently sexual in nature;
- 2) *Offensive remarks* about a person's gender;
- 3) *Quid pro quo* sexual harassment is the promise of advancement or some benefit in exchange for sexual favors.

Hostile Work Environment: An environment that a reasonable person would consider hostile or abusive, and the person who is the object of the harassment perceives it to be hostile or abusive. A hostile work environment is determined by looking at all of the circumstances including, but not limited to:

- (1) The frequency of the alleged harassing conduct;
- (2) The severity of the alleged harassing conduct;
- (3) Whether the alleged harassing conduct was physically threatening or humiliating; and
- (4) Whether the alleged harassing conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive environment.

Retaliation: Any act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or individuals exercising rights under this policy.

Quite simply, the House policy with regard any of the above conduct will always be one of zero tolerance.

What do you do if you have been harassed?

The Arizona House of Representatives is committed to being a safe place to work. If any member or employee experiences any type of this unlawful conduct, he or she is ***strongly*** encouraged to report the conduct. We cannot remedy the problem if we are unaware of the problem. You can report harassment to any of the following individuals:

- Majority or Minority Chief of Staff
- General Counsel of Majority or Minority Staff
- The Rules Attorneys
- Chief Clerk
- Your staff director or supervisor

For your review, the following are the House procedures that may be employed when seeking to end the unlawful behavior and to fully resolve the complainant's concerns.

In the event an employee or member of the Arizona House of Representatives has complained about conduct that could be characterized as illegal harassment, the House's reaction becomes critical. This policy is intended to provide summary guidance primarily to House leadership but also to House staff. It serves as the process for resolving harassment complaints in the Arizona House of Representatives, and it supersedes any other policies or practices within the House that may have been developed by the various departments. It is advisable to review and consider each of the provisions of this memo before taking any action on any harassment complaint. The House recognizes that the facts surrounding each complaint are unique and, as such, these procedures are designed to be malleable and may be tailored to meet the needs of each individual circumstance. The investigators are afforded discretion to adjust these recommended procedures, as they deem proper, to satisfy the needs and to fully remedy the concerns of the complainant and to preserve the integrity of the Arizona House of Representatives.

While House Rules do not specify any protocol or procedure for investigating a complaint of conduct that could be considered illegal harassment, the following steps should be considered:

- Appoint an investigation team.
- Meet with the complainant (Sample form #1).
- Evaluate the complaint.
- Interview the accused (Sample form #2).
- Investigate further (Sample form #3).
- Prepare an investigation report.
- Take remedial action and follow up.
- Respond to any appeal.

What occurs after a complaint has been made?

I. Investigation Team

Keep in mind, proper selection of an investigation team is important because those selected may ultimately be the primary witnesses for the House in the unfortunate event of formal proceedings or litigation. The Speaker or the Speaker's representative should appoint one chief investigator who will interview all witnesses. A second or third person should be selected to assist the chief investigator in taking notes, arranging interviews, to act as a witness to verify what was said during the interviews, and to testify on behalf of the House about the investigation. The investigation team should consist of individuals who are comfortable interviewing others and who can take thorough and accurate notes, including the Rules counsel and counsel for either caucus as may be appropriate under the circumstances. Also, the interviewers must be able to gain the trust of those they are interviewing. The investigators should be sensitive to gender, race or political party.

II. Meet With the Complainant

The goal of the initial meeting with the complainant (the person alleging a violation of this policy) is to obtain a thorough and detailed explanation of the complaint. The investigator should use the Notes/Checklist provided as Sample Form #1 herein. At that initial meeting, the investigator should stress that retaliation against the complainant is strictly prohibited and that the complainant should not discuss the meeting with anyone. The investigators should inform the complainant that anything he or she discusses will remain confidential to the greatest extent possible but that information may be shared among the investigators and that the accused will be given a chance to respond to the allegations of harassment.

III. Evaluate the Complaint

The preliminary evaluation is intended to determine whether the complaint involves unlawful harassment. The interview may reveal a situation that, if substantiated, warrants further investigation. Some situations may require precautionary remedial action before further investigation. In such a circumstance, and if the complainant agrees, the House may wish to permit the complainant to take a few days of paid leave or to work in another area pending the investigation. This evaluation should be reviewed with the Speaker or Speaker's representative and upon advice of counsel.

The initial interview may reveal that the allegations, even if substantiated, do not qualify as unlawful harassment, but rather the situation involves a personality conflict or a negative reaction to job performance criticism, or simply conduct that does not amount to unlawful harassment. If it is clear at the outset that a complaint should not be handled as an unlawful harassment matter, inform the complainant and close the matter.

IV. Interview the Accused

The next step in the investigation involves confronting the person accused of harassment. When scheduling the meeting, do not inform the accused of the reason for the meeting. It is important to get a spontaneous response. The meeting with the accused should happen as quickly after the meeting with the complainant as possible. The investigator should consider using the Notes/Checklist provided as Sample Form #2 herein and begin the interview by informing the accused that the investigators are acting under the authority of the House and with the express permission of the Speaker. Use the interview to carefully assess the accused's credibility based on eye contact, clarity of memory, responsiveness to questions, genuineness of reaction, etc. If the accused admits the material allegations, it is likely that no further investigation will be needed, and the investigator should move on to the remedial stage.

V. Investigate Further

If there are fact disputes that are material to the investigation and other persons have been identified as witnesses by either the complainant or the accused, interview those witnesses following essentially the same guidelines. The investigator should use the Notes/Checklist provided as Sample Form #3 herein. Remind each person to keep the conversation confidential.

VI. Prepare an Investigation Report

Prepare a report to the Speaker containing both factual and legal conclusions from the investigation. The report format may vary, but it should list each allegation and the accused's response and the finding with respect to the allegation. Judgments of credibility are acceptable where there is reasonable basis for judgment.

The investigators should show the report, but not provide a copy, to the complainant and accused after the Speaker has determined the remedial action. Any party may submit a response to the report, but the Speaker and the investigation team are not required to reply to the response or to any supplemental materials.

VII. Take Remedial Action and Follow Up

When the report is completed, the investigator may discuss remedial action with the Speaker. The recommended action may be conveyed orally, and the action shall be documented only after there is agreement on what action to take. The goal of this process is to ensure that there will be no further harassment and that the complainant is made whole.

If a complaint cannot be substantiated or refuted, both parties should be so informed, and the accused should be clearly informed or reminded of the restrictions against unlawful harassment. The complainant should be told that any future incidents should be reported immediately, as they are occurring, including any incidents of suspected retaliation.

If the conclusion is that there was unlawful harassment, the House should take appropriate remedial action regarding the accused. This may include one or a combination of the following:

1. A written reprimand.

2. Suspension without pay.
3. Mandatory training or counseling on sexual harassment.
4. Reassignment of the accused.
5. Demotion.
6. Withholding of a promotion.
7. Discharge.
8. Where applicable, any action available under House Rule 1.
 - a. Remedies for the complainant may include:
 9. Reimbursement of any monetary loss.
 10. Reimbursement of expenses for counseling.
 11. Restoration of a job.
 12. Paid leave.

Remedial action should be unconditional but limited to what is necessary to make the victim whole. The complainant may want a cash payment for pain and suffering but this is not typically warranted at this stage, unless the House failed to act in the face of previous complaints and there is clear evidence of psychological injury to the victim.

Misconduct during an investigation, such as violating the confidentiality of the investigation, publicizing unfounded accusations, and making demonstrably false statements, may be grounds for disciplinary action.

VIII. General Considerations When Interviewing Anyone (Including the complainant and the accused)

1. Take detailed notes, as close to verbatim as possible, during each interview. Notes should be taken at all stages of the interview, either during meetings or immediately after, so that there is a record of the investigation to support the conclusions and remedial action taken. The documentation should not become part of the personnel record to which others will have access, but should be maintained separately and securely.
2. Sign and date the notes.

3. Identify the individual being interviewed at the top of a new page for each individual. Place the names of those present at the interview, along with the date, time, and location of the interview.
4. Make appropriate disclosures at the commencement of the interview including:
 - (a) State what is being investigated, for example, “we are investigating an employee complaint of improper conduct.”
 - (b) Tell how the information received may be used, for example: “We will review your information, along with the information we obtain from other witnesses and try to determine whether improper conduct occurred.”
 - (c) Explain that information obtained during the interview will be reported only to those within and possibly outside the House who have a need to know of it.
 - (d) Explain the seriousness of the investigation.
 - (e) Explain the importance of accurate information and the individual’s obligation to provide truthful, thorough information.
 - (f) Caution the individual against discussing the interview or any information the individual obtains during the interview with any other persons.
5. In investigations regarding specific events, cover all events that occurred during the relevant time frame in chronological blocks of time. Do not leave the time block until all details necessary to recreate the scene have been established.
6. Pin each witness down to facts: specifically, what the witness saw, heard, did, smelled, or felt. Distinguish matters for which the individual has personal knowledge from hearsay.
7. Follow up on answers with appropriate additional questions by developing questions to corroborate or refute information provided by other witnesses or evidence, typically without disclosing the source. Let the individual tell you in his or her own words what he or she saw.
8. Use appropriate question formats. Typically, start with open-ended questions. Move to more narrow, focused, and even leading questions after the individual has sketched the limits of the events as he/she recalls them. Avoid using compound questions; ask one question at a time. Typically, ask questions that force the individual to relate events chronologically to ensure thorough coverage. Try to save unfriendly or embarrassing questions until the end of the interview; beginning with hostile or tough questions usually causes the interviewee to become defensive. However, do not conclude the interview without asking the tough questions, even if the interviewee is uncomfortable.

9. Never give the impression of being judgmental or that you disbelieve any individual, and do not express an opinion as to whether something inappropriate occurred during this fact-gathering process. Especially with regard to the complainant, the goal is **not** to make the individual feel like the target of the investigation.
10. Do not include in your interview notes your own interpretations, beliefs, assumptions, or conclusions about the information given to you by the interviewee. (“Just the facts, and nothing but the facts.”)
11. Generally, recording interviews is not advisable. Recorders often frighten interviewees and make them hesitant to share the facts they have.
12. Stress the importance of not disclosing the questions asked, information given, or other information about the interview to others to facilitate a thorough, impartial investigation.
13. Avoid discussing theories, strategy, assessment, or other evidence with the individual.
14. Do not repeat to anyone who does not have a need to know the accusations made by the complainant, since these could be potential liability for defamation or other claims.

Confidentiality of the parties involved must be respected to the greatest extent possible without compromising the investigation. Information concerning a complaint will not be released to anyone not directly involved in an investigation, a lawsuit, the implementation of corrective action, or as otherwise required by law.

Sample Form #1

**Meeting With
Complainant**

Notes/Checklist

Meeting With Complainant

Individual being interviewed: _____

Those present at the interview: _____

Date of interview: _____

Time of interview: _____

Place of the interview: _____

1. Make disclosures:

- The purpose of the meeting is to obtain a thorough and detailed explanation of the complaint so that we can review the information, along with any information we obtain from other individuals and try to make a determination as to whether improper conduct occurred.

- Information obtained during the interview will be reported only to those within and possibly outside the House who have a need to know of it.

2. Explain the seriousness of the investigation.

3. Explain the importance of accurate information and the individual's obligation to provide truthful, thorough information.

4. The investigator should:

(a) Learn the identity of the alleged harasser.

(b) Get a thorough explanation of the conduct that is the subject of the complaint, including who did and said what and where and when the actions occurred.

(c) Get the names of all witnesses or other individuals who potentially helpful information.

(d) Ask whether the complainant has any documentation, notes or other substantiating materials, e.g., telephone records, calendars, letters, gifts, photographs, etc.

(e) Ask whether the complainant confronted the harasser or let the harasser know that the behavior was offensive and unwelcome. If so, ask when, how, and if there were any witnesses.

(f) Ask whether the complainant informed anyone else about the harassment.

(g) Determine what injuries or adverse consequences the complainant has suffered, e.g., medical, missed work, or other consequences.

(h) Ask whether the complainant is aware of any other individuals who have been harassed by the same person.

(i) Ask whether the complainant reported the harassment to any coworkers or supervisors. If so, ask to whom, when, and what was the response.

(j) Ask the complainant what it would take to remedy the situation to his or her satisfaction.

5. Emphasize that the complainant should not discuss the complaint or investigation with anyone; reassure the complainant that there will be **no retaliation** and that the information will not be disclosed to anyone, except as needed to investigate the complaint properly.
6. Ask the complainant, if comfortable, to write the complaint in as much detail as possible and return it within a day or two.
7. Express the House's commitment to take action on the matter in a timely manner and that we will be following up with the complainant.
8. End the meeting by asking the complainant to contact you immediately if there are new incidents or signs of possible retaliation.

ADDITIONAL NOTES:

Signature of Interviewer

Sample Form #2

**Meeting With
Accused**

Notes/Checklist

Meeting With Accused

Individual being interviewed: _____

Those present at the interview: _____

Date of interview: _____

Time of interview: _____

Place of the interview: _____

1. Make disclosures:

- We are here at the behest of and with the full authority of the House and the Speaker. A complaint of harassment has been made about you. When this sort of thing happens, the purpose of this initial meeting is to investigate the matter. Did you know that a complaint had been made?

2. Explain the seriousness of the investigation.

3. Explain the importance of accurate information and the individual's obligation to provide truthful, thorough information.

4. The investigator should:

- (a) Inform the accused of the allegations one at a time and get his or her response.

(b) If the accused denies the allegations, find out whether he or she is aware of any witnesses or other evidence lending support to the denial.

(c) Find out why he or she believes that such a complaint might have been made (i.e., are there any ulterior motives or reasons for ill will?).

5. Emphasize that the complaint and investigation should not be discussed with anyone; underscore that the House will not tolerate any retaliatory action.
6. End the meeting by instructing the person to have no further contact with the complainant about the complaint.

ADDITIONAL NOTES:

Signature of Interviewer

Sample Form #3

**Meeting With
Additional Witness**

Notes/Checklist

Meeting With Additional Witness

Individual being interviewed: _____

Those present at the interview: _____

Date of interview: _____

Time of interview: _____

Place of the interview: _____

1. Make disclosures:

- We are investigating an employee’s complaint of improper conduct. The purpose of the meeting is to obtain a thorough and detailed explanation of the complaint so that we can review the information, along with any information we obtain from other individuals, and try to determine whether improper conduct occurred.

- Information obtained during the interview will be reported only to those within and possibly outside the House who have a need to know of it. You should not discuss this interview or any information related to the complaint with anyone.

2. Explain the seriousness of the investigation.

3. Explain the importance of accurate information and the individual’s obligation to provide truthful, thorough information.

4. The investigator should:

(a) Get a thorough explanation of event(s) relevant to the complaint, including who did and said what, and where and when the actions occurred.

(b) Get the names of all witnesses to the event(s).

(c) Ask who else may know relevant information about the event(s).

(d) Ask whether the witness has any documentation, notes or other materials, e.g., telephone records, calendars, letters, gifts, photographs, etc., that might relate to the subject of the complaint.

(e) Ask the witness why he or she thinks the event(s) have happened the way they did.

(f) Ask whether the witness believes the event(s) might have been avoided.

(g) Ask whether the witness believes the event(s) to have been isolated or part of a pattern.

(h) Ask the witness if the event(s) have had any impact.

(i) Ask the witness with who the event(s) have been discussed.

- 5. Emphasize that the individual should not discuss the complaint or investigation with anyone; reassure the witness that there will be **no retaliation** and that the information will not be disclosed to anyone, except as needed to investigate the complaint properly.
- 6. Express the House’s commitment to take action on the matter in a timely manner and that there may need to be a follow up interview with the individual.
- 7. End the meeting by asking the witness if he or she has any additional information that might be relevant. Ask whether there are any questions that were not asked that the witness feels should have been asked. Regarding additional information, ask the witness to let us know right away if something had been forgotten, but is later remembered.

ADDITIONAL NOTES:

Signature of Interviewer