

ABUSIVE CONDUCT REPORTING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill enacts the Utah Public Employees Healthy Workplace Act and amends provisions related to reporting and investigating abusive conduct between state employees.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits any state employee, rather than only a state executive branch agency employee, to report abusive conduct to the employee's human resources department;
- ▶ requires an abusive conduct investigation in relation to an abusive conduct complaint;
- ▶ requires an administrative review process for an abusive conduct complaint;
- ▶ requires the Department of Human Resource Management (department) and other state government employers to provide certain training relating to abusive conduct;
- ▶ requires certain employers to annually report to the department on implementation, numbers, and outcomes of abusive conduct complaints;
- ▶ requires the department to annually report to the Economic Development and Workforce Services Interim Committee regarding implementation and recommendations concerning the provisions of this bill; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

67-19a-101, as last amended by Laws of Utah 2018, Chapter 390

- 33 **67-19a-102**, as enacted by Laws of Utah 2018, Chapter 390
 34 **67-19a-202**, as last amended by Laws of Utah 2018, Chapter 390
 35 **67-19a-501**, as enacted by Laws of Utah 2018, Chapter 390
 36 **67-21-3.6**, as enacted by Laws of Utah 2013, Chapter 427
 37 **67-21-3.7**, as last amended by Laws of Utah 2018, Chapter 178

38 ENACTS:

- 39 **67-26-101**, Utah Code Annotated 1953
 40 **67-26-102**, Utah Code Annotated 1953
 41 **67-26-103**, Utah Code Annotated 1953
 42 **67-26-201**, Utah Code Annotated 1953
 43 **67-26-202**, Utah Code Annotated 1953

44 RENUMBERS AND AMENDS:

- 45 **67-26-301**, (Renumbered from 67-19-44, as last amended by Laws of Utah 2018,
 46 Chapter 390)

47

48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **67-19a-101** is amended to read:

50 **67-19a-101. Definitions.**

51 As used in this chapter:

52 (1) "Abusive conduct" means the same as that term is defined in Section [~~67-19-44~~]
 53 67-26-102.

54 (2) "Administrator" means the person appointed under Section 67-19a-201 to head the
 55 Career Service Review Office.

56 (3) "Career service employee" means a person employed in career service as defined in
 57 Section 67-19-3.

58 (4) "Department" means the Department of Human Resource Management.

59 (5) "Employer" means the state of Utah and all supervisory personnel vested with the
 60 authority to implement and administer the policies of an agency.

61 (6) "Excusable neglect" means harmless error, mistake, inadvertence, surprise, a failure
 62 to discover evidence that, through due diligence, could not have been discovered in time to
 63 meet the applicable time period, misrepresentation or misconduct by the employer, or any other

64 reason justifying equitable relief.

65 (7) "Grievance" means:

66 (a) a complaint by a career service employee concerning any matter touching upon the
67 relationship between the employee and the employer;

68 (b) any dispute between a career service employee and the employer;

69 (c) a complaint by a reporting employee that a public entity has engaged in retaliatory
70 action against the reporting employee; and

71 (d) a complaint that the employer subjected the employee to conditions that a
72 reasonable person would consider intolerable, including abusive conduct.

73 (8) "Office" means the Career Service Review Office created under Section
74 67-19a-201.

75 (9) "Public entity" means the same as that term is defined in Section 67-21-2.

76 (10) "Reporting employee" means an employee of a public entity who alleges that the
77 public entity engaged in retaliatory action against the employee.

78 (11) "Retaliatory action" means to do any of the following to an employee in violation
79 of Section 67-21-3:

80 (a) dismiss the employee;

81 (b) reduce the employee's compensation;

82 (c) fail to increase the employee's compensation by an amount that the employee is
83 otherwise entitled to or was promised;

84 (d) fail to promote the employee if the employee would have otherwise been promoted;

85 or

86 (e) threaten to take an action described in Subsections (11)(a) through (d).

87 (12) "Supervisor" means the person:

88 (a) to whom an employee reports; or

89 (b) who assigns and oversees an employee's work.

90 Section 2. Section **67-19a-102** is amended to read:

91 **67-19a-102. Work environment policy.**

92 As recognized and provided in Section [~~67-19-44~~] 67-26-201, it is the policy of the
93 state of Utah to provide and maintain a work environment free from abusive conduct.

94 Section 3. Section **67-19a-202** is amended to read:

95 **67-19a-202. Powers -- Scope of authority.**

96 (1) The office shall serve as the final administrative body to review a grievance from a
97 career service employee and an agency of a decision regarding:

98 (a) a dismissal;

99 (b) a demotion;

100 (c) a suspension;

101 (d) a reduction in force;

102 (e) a dispute concerning abandonment of position;

103 (f) a wage grievance if an employee is not placed within the salary range of the
104 employee's current position;

105 (g) a violation of a rule adopted under Chapter 19, Utah State Personnel Management
106 Act; or

107 (h) except as provided by Subsection [~~(1)(e)(iii)~~] (4)(c), equitable administration of the
108 following benefits:

109 (i) long-term disability insurance;

110 (ii) medical insurance;

111 (iii) dental insurance;

112 (iv) post-retirement health insurance;

113 (v) post-retirement life insurance;

114 (vi) life insurance;

115 (vii) defined contribution retirement;

116 (viii) defined benefit retirement; and

117 (ix) a leave benefit.

118 (2) The office shall serve as the final administrative body to review a grievance by a
119 reporting employee alleging retaliatory action.

120 (3) The office shall serve as the final administrative body to review, without an
121 evidentiary hearing, the findings of an abusive conduct investigation [~~without an evidentiary~~
122 ~~hearing~~] described in Section 67-26-202 of a state executive branch agency employee.

123 (4) The office may not review or take action on:

124 (a) a personnel matter not listed in Subsections (1) through (3);

125 (b) a personnel matter listed in Subsections (1) through (3) that alleges discrimination

126 or retaliation related to a claim of discrimination that is a violation of a state or federal law for
 127 which review and action by the office is preempted by state or federal law; or

128 (c) a personnel matter related to a claim for which an administrative review process is
 129 provided by statute and administered by:

130 (i) the Utah State Retirement Systems under Title 49, Utah State Retirement and
 131 Insurance Benefit Act;

132 (ii) the Public Employees' Benefit and Insurance Program under Title 49, Chapter 20,
 133 Public Employees' Benefit and Insurance Program Act; or

134 (iii) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21,
 135 Public Employees' Long-Term Disability Act.

136 (5) The time limits established in this chapter supersede the procedural time limits
 137 established in Title 63G, Chapter 4, Administrative Procedures Act.

138 Section 4. Section **67-19a-501** is amended to read:

139 **67-19a-501. Procedural steps to be followed in an administrative review of an**
 140 **abusive conduct investigation.**

141 (1) An employee of a state executive branch agency, as defined in Section 67-26-102,
 142 may, under Subsection 67-19a-202(3), initiate an administrative review of the findings of an
 143 abusive conduct investigation within 10 days after the day on which the employee receives
 144 notification of the investigative findings.

145 (2) (a) An employee bringing an administrative review of the findings described in
 146 Subsection (1) may file the request for the administrative review directly with the office.

147 (b) The request for administrative review may [~~set forth~~] describe the reasons for the
 148 [~~appeal~~] administrative review and include any submissions the employee desires to submit.

149 (3) (a) When an employee initiates the review described in Subsection (2) with the
 150 office:

151 (i) the role of the administrative review is to review and rule upon the [~~department's~~]
 152 findings [~~and decision~~] of the abusive conduct investigation; and

153 (ii) an evidentiary hearing is not required.

154 (b) The department shall make the abusive conduct investigative file available for the
 155 [~~administrator's~~] office's in camera review.

156 (c) The [~~administrator~~] office may:

157 (i) request additional relevant documents from the department or the affected
158 employee; and

159 (ii) interview the employee who initiated the administrative review and the
160 ~~[department's]~~ investigators who conducted the investigation.

161 ~~[(4) (a) If the administrator determines that the investigator's findings are not~~
162 ~~reasonable, rational, and sufficiently supported by the record, the administrator may overturn~~
163 ~~the findings and remand to the agency for appropriate action.]~~

164 ~~[(b) The administrator may uphold the department's investigative findings if, based on~~
165 ~~the administrative review, the administrator determines that the investigator's findings are~~
166 ~~reasonable, rational, and sufficiently supported by the record.]~~

167 (4) (a) The office may overturn the findings of the abusive conduct investigation if the
168 office determines that:

169 (i) the findings are not reasonable, rational, or sufficiently supported by the evidence;

170 or

171 (ii) the facts on which the findings are based are unreliable or inaccurate.

172 (b) The office may uphold the findings of the abusive conduct investigation if the
173 office determines that:

174 (i) the findings are reasonable, rational, and sufficiently supported by the evidence; and

175 (ii) the facts on which the findings are based are reliable and accurate.

176 (5) (a) Within 30 days after the day on which an employee initiates an administrative
177 review under this section, the [administrator] office shall issue a notice stating whether the
178 [administrator] office upheld or overturned the investigative findings.

179 (b) The office's determination upon administrative review of the findings resulting
180 from an abusive conduct investigation is final and not subject to appeal.

181 (c) The following are classified as protected under Title 63G, Chapter 2, Government
182 Records Access and Management Act, and any other applicable confidentiality provisions:

183 (i) the request for administrative review and any accompanying documents;

184 (ii) documents that any party provides;

185 (iii) the contents of the administrative review file; and

186 (iv) the office's determination.

187 Section 5. Section **67-21-3.6** is amended to read:

188 **67-21-3.6. Administrative review for political subdivision employees.**

189 (1) (a) A political subdivision may adopt an ordinance to establish an independent
190 personnel board to hear and take action on a complaint alleging adverse action.

191 (b) The ordinance described in Subsection (1)(a) shall include:

192 (i) procedures for filing a complaint and conducting a hearing; and

193 (ii) a burden of proof on the employer to establish by substantial evidence that the
194 employer's action was justified by reasons unrelated to the employee's good faith actions under
195 Section 67-21-3.

196 (2) If a political subdivision adopts an ordinance described in Subsection (1), a
197 political subdivision employee may file a complaint with the independent personnel board
198 alleging adverse action.

199 (3) If an independent personnel board finds that adverse action is taken in violation of
200 the ordinance described in Subsection (1)(a), the independent personnel board may order:

201 (a) reinstatement of the employee at the same level as before the adverse action;

202 (b) the payment of back wages;

203 (c) full reinstatement of fringe benefits;

204 (d) full reinstatement of seniority rights; or

205 (e) if the adverse action includes failure to promote, as described in Subsection
206 67-19a-101[(8)](11)(d), a pay raise that results in the employee receiving the pay that the
207 employee would have received if the person had been promoted.

208 Section 6. Section **67-21-3.7** is amended to read:

209 **67-21-3.7. Administrative review for state institution of higher education**
210 **employees.**

211 (1) (a) As used in this section, "independent personnel board" means a board where no
212 member of the board:

213 (i) is in the same department as the complainant;

214 (ii) is a supervisor of the complainant; or

215 (iii) has a conflict of interest in relation to the complainant or an allegation made in the
216 complaint.

217 (b) A state institution of higher education shall adopt a policy to establish an
218 independent personnel board to hear and take action on a complaint alleging adverse action.

219 (c) The policy described in Subsection (1)(b) shall include:

220 (i) procedures for filing a complaint and conducting a hearing; and

221 (ii) a burden of proof on the employer to establish by substantial evidence that the
222 employer's action was justified by reasons unrelated to the employee's good faith actions under
223 Section 67-21-3.

224 (2) (a) An employee of a state institution of higher education may file a complaint with
225 the independent personnel board described in Subsection (1)(b) alleging adverse action.

226 (b) An independent personnel board that receives a complaint under Subsection (2)(a)
227 shall hear the matter, resolve the complaint, and take action under Subsection (3) within the
228 later of:

229 (i) 30 days after the day on which the employee files the complaint; or

230 (ii) a longer period of time, not to exceed 30 additional days, if the employee and the
231 independent personnel board mutually agree on the longer time period.

232 (3) If an independent personnel board finds that adverse action is taken in violation of
233 the policy described in Subsection (1)(b), the independent personnel board may order, or
234 recommend to a final decision maker:

235 (a) reinstatement of the employee at the same level as before the adverse action;

236 (b) the payment of back wages;

237 (c) full reinstatement of fringe benefits;

238 (d) full reinstatement of seniority rights; or

239 (e) if the adverse action includes failure to promote, as described in Subsection
240 67-19a-101[~~(8)~~](11)(d), a pay raise that results in the employee receiving the pay that the
241 employee would have received if the person had been promoted.

242 (4) A final decision maker who receives a recommendation under Subsection (3) shall
243 render a decision and enter an order within seven days after the day on which the final decision
244 maker receives the recommendation.

245 Section 7. Section **67-26-101** is enacted to read:

246 **CHAPTER 26. UTAH PUBLIC EMPLOYEES HEALTHY WORKPLACE ACT**

247 **Part 1. General Provisions**

248 **67-26-101. Title.**

249 This chapter is known as the "Utah Public Employees Healthy Workplace Act."

250 Section 8. Section **67-26-102** is enacted to read:

251 **67-26-102. Definitions.**

252 As used in this chapter:

253 (1) (a) "Abusive conduct" means verbal, nonverbal, or physical conduct of an
254 employee to another employee that, based on the severity, nature, or frequency of the
255 conduct, a reasonable person would determine:

256 (i) is intended to cause intimidation, humiliation, or unwarranted distress;

257 (ii) results in substantial physical harm or substantial psychological harm as a result of
258 intimidation, humiliation, or unwarranted distress; or

259 (iii) exploits an employee's known physical or psychological disability.

260 (b) "Abusive conduct" does not mean a single act unless the act is an especially severe
261 and egregious act that meets the standard described in Subsection (1)(a)(i), (ii), or (iii).

262 (2) "Abusive conduct complaint process" means the process described in Section
263 67-26-202.

264 (3) "Administrative review process" means a process that allows an employee, in
265 relation to the findings of an abusive conduct investigation, to seek an administrative
266 review that:

267 (a) an employer conducts in accordance with Section 67-26-202; or

268 (b) in relation to a state executive branch agency, the office conducts in accordance
269 with Section 67-19a-501.

270 (4) "Department" means the Department of Human Resource Management.

271 (5) (a) "Employee" means an employee of an employer.

272 (b) "Employee" includes an elected or appointed official.

273 (6) "Employer" means:

274 (a) a state executive branch agency;

275 (b) an employer within the Utah System of Higher Education, including each member
276 institution, the Board of Regents, and the office of the commissioner of higher education;

277 (c) an independent entity, as defined in Section 63E-1-102;

278 (d) the state legislative branch; and

279 (e) the state judicial branch.

280 (7) "Office" means the Career Service Review Office created under Section

281 67-19a-201.

282 (8) "Physical harm" means the impairment of an individual's physical health or bodily
283 integrity, as established by competent evidence.

284 (9) "Psychological harm" means the impairment of an individual's mental health, as
285 established by competent evidence.

286 (10) (a) "State executive branch agency" means a department, division, office, bureau,
287 or other organization within the state executive branch.

288 (b) "State executive branch agency" includes an agency under the authority of the
289 governor, lieutenant governor, state treasurer, state auditor, or attorney general.

290 (c) "State executive branch agency" does not include the Utah System of Higher
291 Education or an independent entity, as defined in Section 63E-1-102.

292 Section 9. Section **67-26-103** is enacted to read:

293 **67-26-103. Effect of chapter.**

294 This chapter does not:

295 (1) exempt or relieve a person from a liability, duty, or penalty provided by another
296 federal or state law;

297 (2) create a private right of action;

298 (3) expand or diminish rights or remedies available to a person before July 1, 2020; or

299 (4) expand or diminish grounds for discipline that existed before July 1, 2020.

300 Section 10. Section **67-26-201** is enacted to read:

301 **Part 2. Abusive Conduct**

302 **67-26-201. State policy on abusive conduct.**

303 It is the policy of the state to provide and maintain a work environment free from
304 abusive conduct.

305 Section 11. Section **67-26-202** is enacted to read:

306 **67-26-202. Abusive conduct complaint, investigation, administrative review**
307 **process.**

308 (1) An employee may file a written complaint of abusive conduct with the human
309 resources department of the employee's employer.

310 (2) If an employee files a written complaint of abusive conduct under Subsection (1),
311 the human resources department of the employee's employer shall conduct an abusive

312 conduct investigation.

313 (3) (a) Each employer that is not a state executive branch agency:

314 (i) shall provide the employer's employees a process for:

315 (A) filing an abusive conduct complaint, including an alternative process if the
 316 complaint involves an individual who would otherwise receive or review an abusive conduct
 317 complaint; and

318 (B) an administrative review of the findings of an abusive conduct investigation
 319 described in Subsection (2) that is substantially similar to the administrative review process
 320 described in Section 67-19a-501; and

321 (ii) may request assistance from the department, at the department's current consultant
 322 rate, or the office, at a reasonable rate established by the office, in developing a process
 323 described in this Subsection (3)(a).

324 (b) The department shall provide a process for an employee of a state executive branch
 325 agency to file an abusive conduct complaint, including an alternative process if the complaint
 326 involves an individual who would otherwise receive or review an abusive conduct complaint.

327 (4) The complaint described in Subsection (1) and a subsequent abusive conduct
 328 investigation are subject to:

329 (a) in relation to an employer other than a state executive branch agency, the
 330 administrative review process described in Subsection (3)(a); and

331 (b) in relation to a state executive branch agency, the office's administrative review
 332 process described in Section 67-19a-501.

333 Section 12. Section **67-26-301**, which is renumbered from Section 67-19-44 is
 334 renumbered and amended to read:

335 **Part 3. Training and Reporting**

336 **~~[67-19-44].~~ 67-26-301. Abusive conduct training.**

337 ~~[(1) As used in this section:]~~

338 ~~[(a) (i) "Abusive conduct" means verbal, nonverbal, or physical conduct of an~~
 339 ~~employee to another employee that, based on its severity, nature, and frequency of occurrence,~~
 340 ~~a reasonable person would determine:]~~

341 ~~[(A) is intended to cause intimidation, humiliation, or unwarranted distress;]~~

342 ~~[(B) results in substantial physical or psychological harm as a result of intimidation,~~

343 ~~humiliation, or unwarranted distress; or]~~

344 ~~[(C) exploits an employee's known physical or psychological disability.]~~

345 ~~[(ii) A single act does not constitute abusive conduct, unless it is an especially severe~~
346 ~~and egregious act that meets the standard under Subsection (1)(a)(i)(A), (B), or (C).]~~

347 ~~[(b) "Employee" means an employee of a state executive branch agency.]~~

348 ~~[(c) "Physical harm" means the impairment of a person's physical health or bodily~~
349 ~~integrity, as established by competent evidence.]~~

350 ~~[(d) "Psychological harm" means the impairment of a person's mental health, as~~
351 ~~established by competent evidence.]~~

352 ~~[(2) It is the policy of the state of Utah to provide and maintain a work environment~~
353 ~~free from abusive conduct.]~~

354 ~~[(3) An employee may file a written complaint of abusive conduct with the department~~
355 ~~and subject to further administrative review in accordance with Section 67-19a-501.]~~

356 ~~[(4) By July 1, 2019, the department shall amend the department's rule, in accordance~~
357 ~~with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the~~
358 ~~definitions in Subsection (1) and Title 67, Chapter 19a, Grievance Procedures.]~~

359 ~~[(5)]~~ (1) (a) The department shall provide biennial training to educate all state
360 executive branch agency employees and supervisors about how to prevent abusive workplace
361 conduct.

362 (b) The training described in Subsection (1)(a) shall include information on:

363 (i) what constitutes abusive conduct and the ramifications of abusive conduct;

364 (ii) resources available to employees who are subject to abusive conduct; and

365 (iii) the [grievance] abusive conduct complaint process described in Section 67-26-202.

366 (2) (a) The department shall create a baseline training module for employers that are
367 not state executive branch agencies to educate the employers' respective employees and
368 supervisors about how to prevent abusive workplace conduct.

369 (b) The baseline training module described in Subsection (2)(a) shall include
370 information on what constitutes abusive conduct and the ramifications of abusive conduct.

371 (c) Each employer that is not a state executive branch agency shall create and provide
372 supplemental training to educate the employer's employees and supervisors that supplements
373 the department's baseline training module with information regarding:

- 374 (i) resources available to employees who are subject to abusive conduct; and
375 (ii) the employer's abusive conduct complaint process described in Section 67-26-202.
376 (d) An employer may request assistance from the department, at the department's
377 current consultant rate, in developing the training described in Subsection (2)(c).
378 ~~[(6)]~~ (3) (a) Each ~~[state agency]~~ employer shall provide professional development
379 training ~~[approved by the department]~~ to promote:
380 (i) ethical conduct;
381 (ii) organizational leadership practices based in principles of integrity; and
382 (iii) the state policy described in ~~[Subsection (2)]~~ Section 67-26-201.
383 (b) ~~[A state agency]~~ An employer may request assistance from the department, at the
384 department's current consultation rate, in developing training [under] described in this
385 Subsection ~~[(6)]~~ (3).
386 ~~[(7)]~~ (4) (a) Employers shall provide and employees shall participate in the training
387 described in ~~[Subsections (5) and (6)]~~ this section:
388 (i) at the time the employee is hired or within a reasonable time after the employee
389 [commences] begins employment; and [in alternating years thereafter.]
390 (ii) at least every other year after the employee begins employment.
391 ~~[(b) The requirement in Subsection (7)(a) includes notification to all employees at the~~
392 ~~time of hiring or within a reasonable time after the employee commences employment and in~~
393 ~~alternating years thereafter of the abusive conduct complaint procedures and the grievance~~
394 ~~procedures provided in Title 67, Chapter 19a, Grievance Procedures.]~~
395 (b) An employer shall, at the times described in Subsection (4)(a), provide notification
396 to the employee of the abusive conduct complaint process.
397 ~~[(8)]~~ (5) The department may use money appropriated to the department or access
398 support from outside resources to:
399 (a) develop policies against workplace abusive conduct; and
400 (b) enhance professional development training on topics such as:
401 (i) building trust;
402 (ii) effective motivation;
403 (iii) communication;
404 (iv) conflict resolution;

405 (v) accountability;

406 (vi) coaching;

407 (vii) leadership; or

408 (viii) ethics.

409 [~~(9) This section does not:~~]

410 [~~(a) exempt or relieve a person from a liability, duty, or penalty provided by another~~
411 ~~federal or state law;~~]

412 [~~(b) create a private right of action;~~]

413 [~~(c) expand or diminish rights or remedies available to a person before July 1, 2015;~~
414 ~~or]~~

415 [~~(d) expand or diminish grounds for discipline that existed before July 1, 2015.]~~

416 (6) (a) Beginning in 2021, and each year after 2021, an employer that is not a state
417 executive branch agency shall, on or before July 31, report to the department regarding:

418 (i) the employer's implementation of this chapter, including the requirement to provide
419 a process under Section 67-26-202; and

420 (ii) the total number and outcomes of abusive conduct complaints that the employer's
421 employees filed and that the employer investigated or reviewed.

422 [~~(10) (b) The department shall annually report to the Economic Development and~~
423 ~~Workforce Services Interim Committee [by], no later than the November interim meeting~~
424 ~~[regarding], the following:~~

425 [~~(a) the (i) a description the department's implementation of this [section] chapter;~~

426 [~~(b) (ii) the department's recommendations, if any, to:~~

427 (A) appropriately address and reduce workplace abusive conduct; or [to]

428 (B) change definitions or training required by this section; [and]

429 [~~(c) (iii) an annual report of the total number and outcomes of abusive conduct~~
430 ~~complaints that employees filed and the department investigated[-]; and~~

431 (iv) a summary of the reports the department receives under Subsection (6)(a).

432 Section 13. **Effective date.**

433 This bill takes effect on July 1, 2020.