



Utah Department of
**HUMAN
RESOURCE**
Management

ABUSIVE CONDUCT PREVENTION 2020 REPORT

**ECONOMIC DEVELOPMENT &
WORKFORCE SERVICES
INTERIM COMMITTEE**

I. INTRODUCTION/HISTORY

During the 2015 session, the Utah legislature passed HB 216, “Workplace Abusive Conduct Amendments to Promote a Healthy Workplace. The bill enacted Utah Code 67-19-44, Abusive Conduct, which defined “abusive conduct” and required the Department of Human Resource Management (DHRM) to provide training for executive branch state employees and supervisors about how to prevent abusive workplace conduct, beginning July 1, 2015, and in alternating years thereafter. The bill also required affected state agencies to provide professional development training approved by DHRM to promote ethical conduct and organizational leadership practices based on principles of integrity.

The bill authorized DHRM to:

use money appropriated to the department or access support from outside resources to:

- (a) develop policies against workplace abusive conduct; and
- (b) enhance professional development training on topics such as:
 - (i) building trust;
 - (ii) effective motivation;
 - (iii) communication;
 - (iv) conflict resolution;
 - (v) accountability;
 - (vi) coaching;
 - (vii) leadership; or
 - (viii) ethics.

Utah Code 67-19-44(8).

The bill required DHRM to report to the Economic Development and Workforce Services Interim Committee by no later than the November 2015 interim meeting.

DHRM provided its report to the Economic Development and Workforce Services Interim Committee on October 21, 2015. At that time, DHRM reported:

- DHRM had created a new rule governing Abusive Conduct Prevention, which went into effect on July 1, 2015

- DHRM had produced online training and made it available to all Executive Branch state agencies and others, effective July 1, 2015
- DHRM received 9 abusive conduct complaints between July 1, 2015 and October 21, 2015

On January 23, 2018, DHRM provided the Committee with a verbal update regarding DHRM's continued implementation of HB 216. At that time, DHRM reported:

- Effective July 1, 2017, DHRM updated its Abusive Conduct Rule, to be even more consistent with the bill's language
- DHRM revised the online "Workplace Harassment and Abusive Conduct Prevention" training and made it available to all state agencies as of September 8, 2017
- In addition to the required Abusive Conduct Prevention training every two years, all new executive branch employees receive an onboarding email with an attached checklist of things they must do as new employees. That checklist includes instructions that they must complete Abusive Conduct Prevention training within their first 2 months of employment
- Fiscal year 2018 will be the second alternate year for required employee participation in Abusive Conduct Prevention training.
- From July 2015 through December 2017, DHRM received and reviewed 67 complaints of abusive conduct
- 43 of those complaints met the statutory criteria for abusive conduct and were formally investigated by DHRM
- Of the 43 investigations, 7 employees were found to have violated the DHRM Rule on Abusive Conduct Prevention
- Agency management took administrative action with respect to all 7 employees. The actions taken included: a verbal warning, a written reprimand, two suspensions without pay, two demotions, and a dismissal

During the 2018 session, the Utah legislature enacted HB 383, Work Environment and Grievance Procedure Amendments. The bill amended Utah Code 67-19-44, Abusive Conduct, and 67-19a, Grievance Procedures. HB 383 codified the provisions in DHRM Rule R477-16 permitting employees to file a written complaint of abusive conduct with DHRM and added the opportunity for an administrative review by the Career Service Review Office (CSRO) (67-19a-501).

HB 383 required DHRM to update DHRM Rules by July 1, 2019, and update training delivery timing related to abusive conduct. The bill also required DHRM to annually report to the Economic Development and Workforce Services Interim Committee by no later than the November interim meeting regarding:

- (a) the implementation of this section;
- (b) recommendations, if any, to appropriately address and reduce workplace abusive conduct or to change definitions or training required by this section; and
- (c) an annual report of the total number and outcomes of abusive conduct complaints that employees filed and the department investigated.

Utah Code 67-19-44(10).

HB 383 also revised the content and timing of the training Utah Code 67-19-44 requires affected state agencies to provide their employees.

On August 28, 2018, DHRM provided the committee with a written report regarding DHRM's continued implementation of HB 216 and new implementation of HB 383. At that time, DHRM reported:

- Effective July 1, 2018, DHRM Rules were revised to implement the requirements of HB 383 with respect to training and the process for requesting that the Career Service Review Office (CSRO) conduct an administrative review of investigative findings
- Migration of training records to a new learning management system to make it easier to ensure that employees receive training and training statistics are readily available
- Implementation of notification to employees of their grievance rights at the CSRO under Utah Code 67-19a
- Development of other efforts to promote a healthy workplace

On September 13, 2019, DHRM provided the committee with a written report regarding DHRM's continued implementation of HB 216 and HB 383. At that time, DHRM reported:

- The January 2019 roll out of DHRM's Leading with Respect Training for supervisors

During the 2020 session, the Utah legislature enacted HB 12, Abusive Conduct Reporting Amendments. The bill:

- amended Utah Code 67-19a, Grievance Procedures;
- enacted Utah Code 67-26, the Utah Public Employees Healthy Workplace Act;
- moved the provisions set forth in Utah Code 67-19-44, Abusive Conduct, into Utah Code 67-26;
- expanded the employers who must create and maintain an abusive conduct complaint, investigation, and administrative review process to include independent entities as defined in Utah Code 63E-1-102;
- required the judicial branch and each higher education entity to provide training regarding and implement a policy prohibiting, providing for reporting, and resolving abusive conduct;
- required DHRM to create a baseline training about how to prevent abusive workplace conduct for employers who are not state executive branch agencies to use and provide assistance when asked; required employers that are not state executive branch agencies to report the employer's implementation of the Healthy Workplace Act, and the total number and outcomes of abusive conduct complaints that the employer's employees filed and the employer investigated or reviewed to DHRM on or before July 31, 2021, and on or before July 31 each year thereafter; and
- required DHRM to include a summary of the reports it receives from employers that are not state executive branch agencies in its annual report to the Economic Development and Workforce Services Interim Committee.

II. CONTINUED IMPLEMENTATION OF HB 216 AND HB 383, AND IMPLEMENTATION OF NEW HB 12

A. Training Content and Delivery Timing

Abusive conduct prevention training is combined with workplace harassment prevention training. DHRM provides this training to all Executive Branch state agencies and each agency ensures that its employees receive it at the time the employee is hired or within a reasonable time after the employee commences employment and at least biennially thereafter.

Additionally, in January 2019, DHRM rolled out Leading with Respect Training for supervisors. This training was designed to promote a culture of civility in the state's workplaces by addressing the importance of showing respect and preventing abusive conduct, harassment, discrimination, and retaliation.

Moreover, in July 2020, DHRM created a baseline training module for use by non-executive branch state employers to educate their employees about abusive workplace conduct prevention.

B. Statistical Complaint Data

Fiscal Year	Complaints Received	Complaints Formally Investigated	% of Complaints Formally Investigated	Abusive Conduct Substantiated	% of Formally Investigated Complaints Substantiated	% of All Complaints Substantiated
2016	27	21	77.8%	4	19.0%	14.8%
2017	28	18	64.3%	4	22.2%	14.3%
2018	20	5	25.0%	1	20.0%	5.0%
2019	16	8	53.3%	1	12.5%	6.25%
2020	10	5	50.0%	2	40.0%	20.0%
Totals	101	57	56.4%	12	21.0%	11.88%

Comments regarding the data:

As reported in 2019, the Abusive Conduct statute is still too young to draw any meaningful trends from the data set. When dealing with such low numbers of claims, small oddities in complaints make big impacts on statistics. For example, in fiscal years 2016 and 2017, DHRM received three pairs of complaints where employees accused each other of engaging in abusive conduct in such a way that it appears that the second complaint would not have occurred but for the first complaint. Since fiscal year 2017, DHRM has not received similar pairs of complaints. DHRM does not have enough data to say whether pairs of complaints are oddities (which means they would not help explain the higher number of complaints in FY 2016 and 2017) or par for the course.

It is possible that employees are adjusting their behavior to not engage in abusive behaviors. We truly hope that this is at least part of the explanation for the continued decline in the number of complaints we observe starting in FY 2018. Behavior modification as a result of training would fulfill the policy objective of the program and one would hope to see a reduced number of claims over time.

C. Complaint Outcomes

DHRM reported each substantiated claim of abusive conduct to agency management where the involved employees work. The disciplinary penalties the agencies imposed were as follows:

- 1 dismissal
- 3 demotions¹
- 3 five day suspensions without pay
- 1 two day suspension without pay
- 3 written reprimands
- 1 verbal warning

The variance in penalties imposed is due to differences in severity of misconduct and differences within each agency as to how comparable matters were handled.

D. Administrative Review of Investigation Findings

Pursuant to Utah Code 67-19a-501, a party to an abusive conduct complaint filed by a state executive branch employee who is dissatisfied with the findings of an abusive conduct investigation may request that the CSRO Administrator review said findings and determine whether the findings are reasonable, rational, and sufficiently supported by the evidence, and the facts on which the findings are based are accurate. FY 2019 was the first year an administrative review process was made available to employees.

In FY 2019, two employees requested a CSRO administrative review, challenging the investigative findings related to their respective abusive conduct complaints. In both cases, the CSRO Administrator issued decisions upholding the investigative findings.

To date, no employee has requested a CSRO administrative review of the investigative findings of complaints submitted in FY 2020.

¹ One of the demotions reflected here was not a direct result of the substantiated abusive conduct itself, but stemmed from related conduct that the agency deemed more egregious.