

HB0388S01 compared with HB0388

~~text~~ shows text that was in HB0388 but was deleted in HB0388S01.

Inserted text shows text that was not in HB0388 but was inserted into HB0388S01.

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Representative Keven J. Stratton proposes the following substitute bill:

ABUSIVE CONDUCT REPORTING AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Utah Public Employees Healthy Workplace Act and amends existing provisions related to state employee reporting of abusive conduct.

Highlighted Provisions:

This bill:

- ▶ defines terms:
- ▶ allows all state employees rather than executive agency employees to report abusive conduct to ~~the Department of Human Resource Management or~~ the employee's respective human resources department;
- ▶ requires an abusive conduct investigation in relation to an abusive conduct complaint;
- ▶ requires the Utah System of Higher Education to provide an appeal process;

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- ▶ allows ~~{ the administrator of }~~ the Career Service Review Office to conduct administrative reviews of ~~{ all }~~ state employee abusive conduct complaints ~~{ rather than executive agency employee complaints }~~ where the employer does not have an established appeals process; and
- ▶ makes technical changes and conforming.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{ 67-19-44, as last amended by Laws of Utah 2018, Chapter 390~~

~~{ 67-19a-202, as last amended by Laws of Utah 2018, Chapter 390~~

~~67-19a-501, as enacted by Laws of Utah 2018, Chapter 390~~

ENACTS:

67-26-101, Utah Code Annotated 1953

67-26-102, Utah Code Annotated 1953

67-26-103, Utah Code Annotated 1953

67-26-201, Utah Code Annotated 1953

67-26-202, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

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

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

Section 1. Section ~~{ 67-19-44 }~~ 67-19a-202 is amended to read:

~~{ 67-19-44. Abusive conduct.~~

~~———— (1) As used in this section:~~

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

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- ~~—— (A) is intended to cause intimidation, humiliation, or unwarranted distress;~~
- ~~—— (B) results in substantial physical or psychological harm as a result of intimidation, humiliation, or unwarranted distress; or~~
- ~~—— (C) exploits an employee's known physical or psychological disability.~~
- ~~—— (i) A single act does not constitute abusive conduct, unless it is an especially severe and egregious act that meets the standard under Subsection (1)(a)(i)(A), (B), or (C).~~
- ~~—— (b) "Employee" means an employee of [a state executive branch agency] the state.~~
- ~~—— (c) "Physical harm" means the impairment of a person's physical health or bodily integrity, as established by competent evidence.~~
- ~~—— (d) "Psychological harm" means the impairment of a person's mental health, as established by competent evidence.~~
- ~~—— (2) It is the policy of the state of Utah to provide and maintain a work environment free from abusive conduct.~~
- ~~—— (3) (a) An employee may file a written complaint of abusive conduct with the department [and] or the employee's respective human resources department.~~
- ~~—— (b) If an employee files a written complaint of abusive conduct with the employee's respective human resources department under Subsection (3)(a), the human resources department shall conduct an abusive conduct investigation.~~
- ~~—— (c) The complaint described in Subsection (3)(a) and any subsequent abusive conduct investigation are subject to further administrative review in accordance with Section 67-19a-501.~~
- ~~—— (4) By July 1, 2019, the department shall amend the department's rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the definitions in Subsection (1) and Title 67, Chapter 19a, Grievance Procedures.~~
- ~~—— (5) (a) The department shall provide biennial training to educate employees and supervisors about how to prevent abusive workplace conduct.~~
- ~~—— (b) The training shall include information on:~~
 - ~~—— (i) what constitutes abusive conduct and the ramifications of abusive conduct;~~
 - ~~—— (ii) resources available to employees who are subject to abusive conduct; and~~
 - ~~—— (iii) the grievance process.~~
- ~~—— (6) (a) Each state agency shall provide professional development training approved by~~

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~~the department to promote:~~

~~—— (i) ethical conduct;~~

~~—— (ii) organizational leadership practices based in principles of integrity; and~~

~~—— (iii) the state policy described in Subsection (2).~~

~~—— (b) A state agency may request assistance from the department in developing training under this Subsection (6).~~

~~—— (7) (a) Employers shall provide and employees shall participate in the training described in Subsections (5) and (6) at the time the employee is hired or within a reasonable time after the employee commences employment and in alternating years thereafter.~~

~~—— (b) The requirement in Subsection (7)(a) includes notification to all employees at the time of hiring or within a reasonable time after the employee commences employment and in alternating years thereafter of the abusive conduct complaint procedures and the grievance procedures provided in Title 67, Chapter 19a, Grievance Procedures.~~

~~—— (8) The department may 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.~~

~~—— (9) This section does not:~~

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

~~—— (b) create a private right of action;~~

~~—— (c) expand or diminish rights or remedies available to a person before July 1, 2015; or~~

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

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~~— (10) The department shall 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.~~

~~— Section 2. Section 67-19a-202 is amended to read:~~

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

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

(a) a dismissal;

(b) a demotion;

(c) a suspension;

(d) a reduction in force;

(e) a dispute concerning abandonment of position;

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

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

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

(i) long-term disability insurance;

(ii) medical insurance;

(iii) dental insurance;

(iv) post-retirement health insurance;

(v) post-retirement life insurance;

(vi) life insurance;

(vii) defined contribution retirement;

(viii) defined benefit retirement; and

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(ix) a leave benefit.

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

(3) The office shall serve as the final administrative body to review without an evidentiary hearing, the findings of an abusive conduct investigation ~~{, either that the department conducts or that a state employee's respective human resources department conducts in relation to a complaint described in Subsection 67-19-44(3), }~~ without an evidentiary hearing. that:

(a) the department conducts for a state executive agency employee; or

(b) an employer described in Subsection 67-26-202(3)(b) conducts.

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

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

(b) a personnel matter listed in Subsections (1) through (3) that alleges discrimination or retaliation related to a claim of discrimination that is a violation of a state or federal law for which review and action by the office is preempted by state or federal law; or

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

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

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

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

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

Section ~~67-19-501~~2. Section **67-19a-501** is amended to read:

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

(1) An employee may initiate an administrative review of the findings of an abusive conduct investigation ~~{, either that the department conducts or that a state employee's respective human resources department conducts in relation to a complaint }~~ described in Subsection

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~~{67-19-44}~~ 67-19a-202(3) ~~{,}~~ (a) or (b) within 10 days after the day on which the employee receives notification of the investigative findings.

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

(b) The request for administrative review may set forth the reasons for the appeal and include any submissions the employee desires to submit.

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

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

(ii) an evidentiary hearing is not required.

(b) The [department] relevant employer shall make the abusive conduct investigative file available for the administrator's in camera review.

(c) The [administrator] office may:

(i) request additional relevant documents from the [department] relevant employer or the affected employee; and

(ii) interview the [department's] investigators who conducted the investigation.

(4) (a) If the [administrator] office determines that the investigator's findings are not reasonable, rational, and sufficiently supported by the record, the [administrator] office may overturn the findings and remand to the [agency] ~~{for other state}~~ respective employer for appropriate action.

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

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

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

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

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- (i) the request for administrative review and any accompanying documents;
- (ii) documents that any party provides;
- (iii) the contents of the administrative review file; and
- (iv) the office's determination.

Section 3. Section 67-26-101 is enacted to read:

CHAPTER 26. UTAH PUBLIC EMPLOYEES HEALTHY WORKPLACE ACT

Part 1. General Provisions

67-26-101. Title.

This chapter shall be known as "Utah Public Employees Healthy Workplace Act."

Section 4. Section 67-26-102 is enacted to read:

67-26-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

(3) "Appeal process" means an administrative review under Section 67-19a-501 or an employer's existing process that allows an employee to seek a review of an employment decision.

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

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

(6) "Employer means the state, including:

(a) the executive branch, including:

(i) a state executive branch agency;

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(ii) the Utah System of Higher Education; and

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

(b) the legislative branch; and

(c) the judicial branch.

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

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

Section 5. Section 67-26-103 is enacted to read:

67-26-103. Effect of chapter.

This chapter does not:

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

(2) create a private right of action;

(3) expand or diminish rights or remedies available to a person before July 1, 2019; or

(4) expand or diminish grounds for discipline that existed before July 1, 2019.

Section 6. Section 67-26-201 is enacted to read:

Part 2. Abusive Conduct

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

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

Section 7. Section 67-26-202 is enacted to read:

67-26-202. Abusive conduct complaint process.

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

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

(3) The Utah System of Higher Education shall provide an appeal process for employees within the Utah System of Higher Education.

(4) The complaint described in Subsection (1) and any subsequent abusive conduct

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investigation are subject to:

(a) in relation to the Utah System of Higher Education, the appeal process described in Subsection (3); or

(b) (i) if the employer has a human resources appeal process, the employer's human resources appeal process; or

(ii) if the employer does not have a human resources appeal process, further administrative review in accordance with Section 67-19a-501.

Section 8. Section 67-26-301, which is renumbered from Section 67-19-44 is renumbered and amended to read:

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

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

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

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

~~[(B) results in substantial physical or psychological harm as a result of intimidation, humiliation, or unwarranted distress; or]~~

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

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

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

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

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

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

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

~~[(4) By July 1, 2019, the]~~

~~(1) The department shall amend the department's [rule] rules, in accordance with Title~~

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63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the definitions in [Subsection (1) and Title 67,] Section 67-26-102 and Chapter 19a, Grievance Procedures.

[(5)] (2) (a) The department shall [provide] create biennial training to educate employees and supervisors about how to prevent abusive workplace conduct.

(b) The training shall include information on:

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

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

(iii) the [grievance] abusive conduct complaint process.

[(6)] (3) (a) Each [state agency] employer shall provide professional development training approved by the department to promote:

(i) ethical conduct;

(ii) organizational leadership practices based in principles of integrity; and

(iii) the state policy described in [Subsection (2)] Section 67-26-103.

(b) [A state agency] An employer may request assistance from the department in developing training under this Subsection [(6)] (3).

[(7)] (4) (a) Employers shall provide and employees shall participate in the training described in Subsections [(5)] (2) and [(6)] (3):

(i) at the time the employee is hired or within a reasonable time after the employee [commences] begins employment; and

(ii) in alternating years [thereafter] after the employee begins employment.

[(b) The requirement in Subsection (7)(a) includes notification to all employees at the time of hiring or within a reasonable time after the employee commences employment and in alternating years thereafter of the abusive conduct complaint procedures and the grievance procedures provided in Title 67, Chapter 19a, Grievance Procedures.]

(b) An employer shall provide notification to all employees at the times described in Subsection (4)(a) of the abusive conduct complaint process.

[(8)] (5) The department may 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;

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(ii) effective motivation;

(iii) communication;

(iv) conflict resolution;

(v) accountability;

(vi) coaching;

(vii) leadership; or

(viii) ethics.

[(9) This section does not:]

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

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

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

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

(6) (a) By October 31 annually, each employer shall report to the department regarding the total number and outcomes of abusive conduct complaints that the employer's employees filed and the employer investigated.

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

[(a)] (i) the implementation of this section;

[(b)] (ii) recommendations, if any, to appropriately address and reduce workplace abusive conduct or to change definitions or training required by this section; and

[(c)] (iii) an annual report of the total number and outcomes of abusive conduct complaints that employees filed and the department investigated.

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