

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 state executive branch agency employees to report abusive conduct to the employee's respective human resources department;
- ▶ requires an abusive conduct investigation in relation to an abusive conduct complaint;
- ▶ requires certain employers to provide an administrative review process;
- ▶ requires the Department of Human Resource Management (department) to provide certain training;
- ▶ requires certain employers to provide supplemental training;
- ▶ 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 Government Operations Interim Committee regarding implementation and recommendations; and



26 ▶ makes technical changes and conforming.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 [67-19a-101](#), as last amended by Laws of Utah 2018, Chapter 390

34 [67-19a-102](#), as enacted by Laws of Utah 2018, Chapter 390

35 [67-19a-202](#), as last amended by Laws of Utah 2018, Chapter 390

36 [67-19a-501](#), as enacted by Laws of Utah 2018, Chapter 390

37 ENACTS:

38 [67-26-101](#), Utah Code Annotated 1953

39 [67-26-102](#), Utah Code Annotated 1953

40 [67-26-103](#), Utah Code Annotated 1953

41 [67-26-201](#), Utah Code Annotated 1953

42 [67-26-202](#), Utah Code Annotated 1953

43 RENUMBERS AND AMENDS:

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



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

48 Section 1. Section [67-19a-101](#) is amended to read:

49 **[67-19a-101. Definitions.](#)**

50 As used in this chapter:

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

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

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

- 57 (4) "Department" means the Department of Human Resource Management.
- 58 (5) "Employer" means the state of Utah and all supervisory personnel vested with the
59 authority to implement and administer the policies of an agency.
- 60 (6) "Excusable neglect" means harmless error, mistake, inadvertence, surprise, a failure
61 to discover evidence that, through due diligence, could not have been discovered in time to
62 meet the applicable time period, misrepresentation or misconduct by the employer, or any other
63 reason justifying equitable relief.
- 64 (7) "Grievance" means:
- 65 (a) a complaint by a career service employee concerning any matter touching upon the
66 relationship between the employee and the employer;
- 67 (b) any dispute between a career service employee and the employer;
- 68 (c) a complaint by a reporting employee that a public entity has engaged in retaliatory
69 action against the reporting employee; and
- 70 (d) a complaint that the employer subjected the employee to conditions that a
71 reasonable person would consider intolerable, including abusive conduct.
- 72 (8) "Office" means the Career Service Review Office created under Section
73 [67-19a-201](#).
- 74 (9) "Public entity" means the same as that term is defined in Section [67-21-2](#).
- 75 (10) "Reporting employee" means an employee of a public entity who alleges that the
76 public entity engaged in retaliatory action against the employee.
- 77 (11) "Retaliatory action" means to do any of the following to an employee in violation
78 of Section [67-21-3](#):
- 79 (a) dismiss the employee;
- 80 (b) reduce the employee's compensation;
- 81 (c) fail to increase the employee's compensation by an amount that the employee is
82 otherwise entitled to or was promised;
- 83 (d) fail to promote the employee if the employee would have otherwise been promoted;
- 84 or
- 85 (e) threaten to take an action described in Subsections (11)(a) through (d).
- 86 (12) "Supervisor" means the person:
- 87 (a) to whom an employee reports; or

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

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

90 **67-19a-102. Work environment policy.**

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

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

94 **67-19a-202. Powers -- Scope of authority.**

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

97 (a) a dismissal;

98 (b) a demotion;

99 (c) a suspension;

100 (d) a reduction in force;

101 (e) a dispute concerning abandonment of position;

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

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

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

108 (i) long-term disability insurance;

109 (ii) medical insurance;

110 (iii) dental insurance;

111 (iv) post-retirement health insurance;

112 (v) post-retirement life insurance;

113 (vi) life insurance;

114 (vii) defined contribution retirement;

115 (viii) defined benefit retirement; and

116 (ix) a leave benefit.

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

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

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

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

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

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

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

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

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

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

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

138 **67-19a-501. Procedural steps to be followed in an administrative review of an**
139 **abusive conduct investigation.**

140 (1) An employee may initiate an administrative review of the findings of an abusive
141 conduct investigation described in Section 67-19a-202 that the department conducts within 10
142 days after the day on which the employee receives notification of the investigative findings.

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

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

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

149 (i) the role of the administrative review is to review and rule upon the [~~department's~~]

150 findings [~~and decision~~] of the abusive conduct investigation; and

151 (ii) an evidentiary hearing is not required.

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

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

155 (i) request additional relevant documents from the department or the affected
156 employee; and

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

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

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

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

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

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

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

172 (ii) documents that any party provides;

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

174 (iv) the office's determination.

175 Section 5. Section **67-26-101** is enacted to read:

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

177 **Part 1. General Provisions**

178 **67-26-101. Title.**

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

180 Section 6. Section **67-26-102** is enacted to read:

181 **67-26-102. Definitions.**182 As used in this chapter:183 (1) (a) "Abusive conduct" means verbal, nonverbal, or physical conduct of an
184 employee to another employee that, based on its severity, nature, and frequency of occurrence,
185 a reasonable person would determine:186 (i) is intended to cause intimidation, humiliation, or unwarranted distress;187 (ii) results in substantial physical or psychological harm as a result of intimidation,
188 humiliation, or unwarranted distress; or189 (iii) exploits an employee's known physical or psychological disability.190 (b) "Abusive conduct" does not mean a single act unless the act is an especially severe
191 and egregious act that meets the standard under Subsection (1)(a)(i), (ii), or (iii).192 (2) "Abusive conduct complaint process" means the process described in Section
193 67-26-202.194 (3) "Administrative review process" means a process that allows an employee, in
195 relation to the findings of an abusive conduct investigation, to seek an administrative review
196 that:197 (a) an employer conducts in accordance with Section 67-26-202; or198 (b) in relation to a state executive branch agency, the office conducts in accordance
199 with Section 67-19a-501.200 (4) "Department" means the Department of Human Resource Management.201 (5) "Employee" means an employee of an employer.202 (6) "Employer means the following:203 (a) the state executive branch, including:204 (i) a state executive branch agency;205 (ii) an employer within the Utah System of Higher Education, including each member
206 institution, the Board of Regents, and the office of the commissioner of higher education; and207 (iii) an independent entity, as defined in Section 63E-1-102;208 (b) the state legislative branch; and209 (c) the state judicial branch.210 (7) "Office" means the Career Service Review Office created under Section
211 67-19a-201.

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

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

216 Section 7. Section **67-26-103** is enacted to read:

217 **67-26-103. Effect of chapter.**

218 This chapter does not:

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

221 (2) create a private right of action;

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

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

224 Section 8. Section **67-26-201** is enacted to read:

225 **Part 2. Abusive Conduct**

226 **67-26-201. State policy on abusive conduct.**

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

229 Section 9. Section **67-26-202** is enacted to read:

230 **67-26-202. Abusive conduct complaint, investigation, administrative review**
231 **process.**

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

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

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

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

239 (A) making an abusive conduct complaint, including an alternative process in the case
240 of a complaint involving an individual who would otherwise receive or review an abusive
241 conduct complaint; and

242 (B) an administrative review of the findings of an abusive conduct investigation

243 described in Subsection (2) that is substantially similar to the administrative review process
 244 described in Section 67-19a-501; and

245 (ii) may request assistance from the department, at the department's current consultant
 246 rate, or the office, a reasonable rate that the office sets, in developing a process described in
 247 this Subsection (3).

248 (b) The department shall provide the employees of state executive branch agencies a
 249 process for making an abusive conduct complaint, including an alternative process in the case
 250 of a complaint involving an individual who would otherwise receive or review an abusive
 251 conduct complaint.

252 (4) The complaint described in Subsection (1) and any subsequent abusive conduct
 253 investigation are subject to:

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

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

258 Section 10. Section **67-26-301**, which is renumbered from Section 67-19-44 is
 259 renumbered and amended to read:

260 **Part 3. Training and Reporting**

261 ~~[67-19-44].~~ **67-26-301.** ~~67-19-44.~~ **Abusive conduct training.**

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

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

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

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

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

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

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

273 ~~[(c) "Physical harm" means the impairment of a person's physical health or bodily~~

274 integrity, as established by competent evidence.]

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

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

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

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

284 [~~(5)~~] (1) (a) (i) The department shall provide biennial training to educate all state
285 executive branch agency employees and supervisors about how to prevent abusive workplace
286 conduct.

287 [~~(b)~~] (ii) The training described in Subsection (1)(a)(i) shall include information on:

288 [~~(i)~~] (A) what constitutes abusive conduct and the ramifications of abusive conduct;

289 [~~(ii)~~] (B) resources available to employees who are subject to abusive conduct; and

290 [~~(iii)~~] (C) the [~~grievance~~] abusive conduct complaint process described in Section
291 67-26-202.

292 (b) (i) The department shall create a baseline training module for employers that are
293 not state executive branch agencies to educate the employers' respective employees and
294 supervisors about how to prevent abusive workplace conduct.

295 (ii) The baseline training module described in Subsection (1)(b)(i) shall include
296 information on what constitutes abusive conduct and the ramifications of abusive conduct.

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

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

301 (B) the employer's abusive conduct complaint process described in Section 67-26-202.

302 (ii) An employer may request assistance from the department, at the department's
303 current consultant rate, in developing the training described in Subsection (1)(c)(i).

304 [~~(6)~~] (2) (a) Each [~~state agency~~] employer shall provide professional development

305 training [~~approved by the department~~] to promote:

- 306 (i) ethical conduct;
- 307 (ii) organizational leadership practices based in principles of integrity; and
- 308 (iii) the state policy described in [~~Subsection (2)~~] Section 67-26-103.

309 (b) [~~A state agency~~] An employer may request assistance from the department, at the
310 department's current consultant rate, in developing training under this Subsection [~~(6)~~] (2).

311 [~~(7)~~] (3) (a) Employers shall provide and employees shall participate in the training
312 described in Subsections [~~(5)~~] (1) and [~~(6)~~] (2);

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

315 (ii) in at least alternating years [~~thereafter~~] after the employee begins employment.

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

320 (b) An employer shall provide notification to all employees at the times described in
321 Subsection (3)(a) of the abusive conduct complaint process.

322 [~~(8)~~] (4) The department may use money appropriated to the department or access
323 support from outside resources to:

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

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

335 [~~(a) exempt or relieve a person from a liability, duty, or penalty provided by another~~]

336 ~~federal or state law;~~
337 ~~[(b) create a private right of action;]~~
338 ~~[(c) expand or diminish rights or remedies available to a person before July 1, 2015;~~
339 ~~or]~~
340 ~~[(d) expand or diminish grounds for discipline that existed before July 1, 2015.]~~
341 (5) (a) Beginning in 2020, by July 31 annually, each employer that is not a state
342 executive branch agency shall report to the department regarding:
343 (i) the employer's implementation of this chapter, including the requirement to provide
344 a process under Section 67-26-202; and
345 (ii) the total number and outcomes of abusive conduct complaints that the employer's
346 employees made and that the employer investigated or reviewed.
347 ~~[(10)] (b) The department shall annually report to the Economic Development and~~
348 ~~Workforce Services Interim Committee by no later than the November interim meeting~~
349 ~~regarding:~~
350 ~~[(a)] (i) the department's implementation of this [section] chapter;~~
351 ~~[(b)] (ii) the department's recommendations, if any, to:~~
352 ~~(A) appropriately address and reduce workplace abusive conduct; or~~
353 ~~(B) [to] change definitions or training required by this section; [and]~~
354 ~~[(c)] (iii) an annual report of the total number and outcomes of abusive conduct~~
355 ~~complaints that employees [filed] made and the department investigated[-]; and~~
356 (iv) a summary of the reports the department receives under Subsection (5)(a).
357 **Section 11. Effective date.**
358 This bill takes effect on July 1, 2019.