

**ABUSIVE CONDUCT REPORTING AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**Committee Note:**

The Government Operations Interim Committee recommended this bill.

Legislative Vote: 10 voting for 0 voting against 6 absent

**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



28 Workforce Services Interim Committee regarding implementation and recommendations  
29 concerning the provisions of this bill; and

30       ▶ makes technical and conforming changes.

31 **Money Appropriated in this Bill:**

32       None

33 **Other Special Clauses:**

34       This bill provides a special effective date.

35 **Utah Code Sections Affected:**

36 AMENDS:

37       **67-19a-101**, as last amended by Laws of Utah 2018, Chapter 390

38       **67-19a-102**, as enacted by Laws of Utah 2018, Chapter 390

39       **67-19a-202**, as last amended by Laws of Utah 2018, Chapter 390

40       **67-19a-501**, as enacted by Laws of Utah 2018, Chapter 390

41       **67-21-3.6**, as enacted by Laws of Utah 2013, Chapter 427

42 ENACTS:

43       **67-26-101**, Utah Code Annotated 1953

44       **67-26-102**, Utah Code Annotated 1953

45       **67-26-103**, Utah Code Annotated 1953

46       **67-26-201**, Utah Code Annotated 1953

47       **67-26-202**, Utah Code Annotated 1953

48 RENUMBERS AND AMENDS:

49       **67-26-301**, (Renumbered from 67-19-44, as last amended by Laws of Utah 2018,  
50 Chapter 390)



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

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

53       **67-19a-101. Definitions.**

54       As used in this chapter:

55       (1) "Abusive conduct" means the same as that term is defined in Section [~~67-19-44~~]

56       ~~67-26-102~~.

57       (2) "Administrator" means the person appointed under Section **67-19a-201** to head the

59 Career Service Review Office.

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

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

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

65 (6) "Excusable neglect" means harmless error, mistake, inadvertence, surprise, a failure  
66 to discover evidence that, through due diligence, could not have been discovered in time to  
67 meet the applicable time period, misrepresentation or misconduct by the employer, or any other  
68 reason justifying equitable relief.

69 (7) "Grievance" means:

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

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

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

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

77 (8) "Office" means the Career Service Review Office created under Section  
78 67-19a-201.

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

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

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

84 (a) dismiss the employee;

85 (b) reduce the employee's compensation;

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

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

89 or

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

91 (12) "Supervisor" means the person:

92 (a) to whom an employee reports; or

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

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

95 **67-19a-102. Work environment policy.**

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

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

99 **67-19a-202. Powers -- Scope of authority.**

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

102 (a) a dismissal;

103 (b) a demotion;

104 (c) a suspension;

105 (d) a reduction in force;

106 (e) a dispute concerning abandonment of position;

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

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

111 (h) except as provided by Subsection (4), equitable administration of the following  
112 benefits:

113 (i) long-term disability insurance;

114 (ii) medical insurance;

115 (iii) dental insurance;

116 (iv) post-retirement health insurance;

117 (v) post-retirement life insurance;

118 (vi) life insurance;

119 (vii) defined contribution retirement;

120 (viii) defined benefit retirement; and

121 (ix) a leave benefit.

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

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

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

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

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

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

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

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

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

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

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

143 **67-19a-501. Procedural steps to be followed in an administrative review of an**  
144 **abusive conduct investigation.**

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

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

151 (b) The request for administrative review may [~~set forth~~] describe the reasons for the

152 ~~[appeal]~~ administrative review and include any submissions the employee desires to submit.

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

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

157 (ii) an evidentiary hearing is not required.

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

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

161 (i) request additional relevant documents from the department or the affected  
162 employee; and

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

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

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

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

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

174 or

175 (ii) the facts on which the findings are based are ~~H→ [unreliable or] ←H~~ inaccurate.

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

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

179 (ii) the facts on which the findings are based are ~~H→ [reliable and] ←H~~ accurate.

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

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

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

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

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

192 **67-21-3.6. Administrative review for political subdivision employees.**

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

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

- 196 (i) procedures for filing a complaint and conducting a hearing; and
- 197 (ii) a burden of proof on the employer to establish by substantial evidence that the  
198 employer's action was justified by reasons unrelated to the employee's good faith actions under  
199 Section **67-21-3**.

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

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

- 205 (a) reinstatement of the employee at the same level as before the adverse action;
- 206 (b) the payment of back wages;
- 207 (c) full reinstatement of fringe benefits;
- 208 (d) full reinstatement of seniority rights; or
- 209 (e) if the adverse action includes failure to promote, as described in Subsection  
210 **67-19a-101(11)(d)**, a pay raise that results in the employee receiving the pay that the employee  
211 would have received if the person had been promoted.

212 Section 6. Section **67-26-101** is enacted to read:

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

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## Part 1. General Provisions

### 67-26-101. Title.

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

Section 7. 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 the severity, nature, or frequency of the conduct, a reasonable person would determine:

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

(ii) results in substantial physical harm or substantial 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 described in Subsection (1)(a)(i), (ii), or (iii).

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

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

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

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

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

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

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

(6) "Employer" means:

(a) a state executive branch agency;

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

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



245 (d) the state legislative branch; and

246 (e) the state judicial branch.

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

248 67-19a-201.

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

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

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

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

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

259 Section 8. Section **67-26-103** is enacted to read:

260 **67-26-103. Effect of chapter.**

261 This chapter does not:

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

264 (2) create a private right of action;

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

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

267 Section 9. Section **67-26-201** is enacted to read:

268 **Part 2. Abusive Conduct**

269 **67-26-201. State policy on abusive conduct.**

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

272 Section 10. Section **67-26-202** is enacted to read:

273 **67-26-202. Abusive conduct complaint, investigation, administrative review**  
274 **process.**

275 (1) An employee may file a written complaint of abusive conduct with the human

276 resources department of the employee's employer.

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

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

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

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

285 (B) an administrative review of the findings of an abusive conduct investigation  
286 described in Subsection (2) that is substantially similar to the administrative review process  
287 described in Section [67-19a-501](#); and

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

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

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

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

298 (b) in relation to a state executive branch agency, the office's administrative review  
299 process described in Section [67-19a-501](#).

300 Section 11. Section **67-26-301**, which is renumbered from Section 67-19-44 is  
301 renumbered and amended to read:

### 302 **Part 3. Training and Reporting**

303 ~~[67-19-44]~~. **67-26-301. Abusive conduct training.**

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

305 ~~[(a) (i) "Abusive conduct" means verbal, nonverbal, or physical conduct of an~~  
306 ~~employee to another employee that, based on its severity, nature, and frequency of occurrence,~~

307 ~~a reasonable person would determine:]~~  
308 ~~[(A) is intended to cause intimidation, humiliation, or unwarranted distress;]~~  
309 ~~[(B) results in substantial physical or psychological harm as a result of intimidation,~~  
310 ~~humiliation, or unwarranted distress; or]~~  
311 ~~[(C) exploits an employee's known physical or psychological disability.]~~  
312 ~~[(ii) A single act does not constitute abusive conduct, unless it is an especially severe~~  
313 ~~and egregious act that meets the standard under Subsection (1)(a)(i)(A), (B), or (C).]~~  
314 ~~[(b) "Employee" means an employee of a state executive branch agency:]~~  
315 ~~[(c) "Physical harm" means the impairment of a person's physical health or bodily~~  
316 ~~integrity, as established by competent evidence.]~~  
317 ~~[(d) "Psychological harm" means the impairment of a person's mental health, as~~  
318 ~~established by competent evidence.]~~  
319 ~~[(2) It is the policy of the state of Utah to provide and maintain a work environment~~  
320 ~~free from abusive conduct.]~~  
321 ~~[(3) An employee may file a written complaint of abusive conduct with the department~~  
322 ~~and subject to further administrative review in accordance with Section [67-19a-501](#).]~~  
323 ~~[(4) By July 1, 2019, the department shall amend the department's rule, in accordance~~  
324 ~~with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the~~  
325 ~~definitions in Subsection (1) and Title 67, Chapter 19a, Grievance Procedures.]~~  
326 ~~[(5)]~~ (1) (a) The department shall provide biennial training to educate all state  
327 executive branch agency employees and supervisors about how to prevent abusive workplace  
328 conduct.  
329 (b) The training described in Subsection (1)(a) shall include information on:  
330 (i) what constitutes abusive conduct and the ramifications of abusive conduct;  
331 (ii) resources available to employees who are subject to abusive conduct; and  
332 (iii) the [grievance] abusive conduct complaint process described in Section [67-26-202](#).  
333 (2) (a) The department shall create a baseline training module for employers that are  
334 not state executive branch agencies to educate the employers' respective employees and  
335 supervisors about how to prevent abusive workplace conduct.  
336 (b) The baseline training module described in Subsection (2)(a) shall include  
337 information on what constitutes abusive conduct and the ramifications of abusive conduct.

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

- 341 (i) resources available to employees who are subject to abusive conduct; and
- 342 (ii) the employer's abusive conduct complaint process described in Section [67-26-202](#).

343 (d) An employer may request assistance from the department, at the department's  
344 current consultant rate, in developing the training described in Subsection (2)(c).

345 ~~[(6)]~~ (3) (a) Each [state agency] employer shall provide professional development  
346 training [approved by the department] to promote:

- 347 (i) ethical conduct;
- 348 (ii) organizational leadership practices based in principles of integrity; and
- 349 (iii) the state policy described in ~~[Subsection (2)]~~ Section [67-26-201](#).

350 (b) ~~[A state agency]~~ An employer may request assistance from the department, at the  
351 department's current consultation rate, in developing training [under] described in this  
352 Subsection ~~[(6)]~~ (3).

353 ~~[(7)]~~ (4) (a) Employers shall provide and employees shall participate in the training  
354 described in ~~[Subsections (5) and (6)]~~ this section:

- 355 (i) at the time the employee is hired or within a reasonable time after the employee  
356 [commences] begins employment; and [in alternating years thereafter.]
- 357 (ii) at least every other year after the employee begins employment.

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

362 (b) An employer shall, at the times described in Subsection (4)(a), provide notification  
363 to the employee of the abusive conduct complaint process.

364 ~~[(8)]~~ (5) The department may use money appropriated to the department or access  
365 support from outside resources to:

- 366 (a) develop policies against workplace abusive conduct; and
- 367 (b) enhance professional development training on topics such as:
- 368 (i) building trust;

369 (ii) effective motivation;

370 (iii) communication;

371 (iv) conflict resolution;

372 (v) accountability;

373 (vi) coaching;

374 (vii) leadership; or

375 (viii) ethics.

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

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

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

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

381 ~~or]~~

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

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

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

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

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

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

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

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

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

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

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

399 Section 12. **Effective date.**

400

This bill takes effect on July 1, 2020.