

HB0012S02 compared with HB0012S01

~~deleted text~~ shows text that was in HB0012S01 but was deleted in HB0012S02.

inserted text shows text that was not in HB0012S01 but was inserted into HB0012S02.

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Representative Keven J. Stratton proposes the following substitute bill:

ABUSIVE CONDUCT REPORTING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses abusive conduct among employees in state government.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ expands the type of state employees who may file a complaint of abusive conduct;
- ▶ 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,

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- 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;
- ▶ requires the ~~{Legislature, the }~~judicial branch~~{,}~~ and an employer within the Utah System of Higher Education to provide training to their employees regarding abusive conduct, and to create a policy for reporting and resolving abusive conduct, among their employees; 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

67-19a-102, as enacted 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

67-26-203, 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:

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

67-19a-101. Definitions.

As used in this chapter:

- (1) "Abusive conduct" means the same as that term is defined in Section [~~67-19-44~~]
67-26-102.
- (2) "Administrator" means the person appointed under Section 67-19a-201 to head the Career Service Review Office.
- (3) "Career service employee" means a person employed in career service as defined in Section 67-19-3.
- (4) "Department" means the Department of Human Resource Management.
- (5) "Employer" means the state of Utah and all supervisory personnel vested with the authority to implement and administer the policies of an agency.
- (6) "Excusable neglect" means harmless error, mistake, inadvertence, surprise, a failure to discover evidence that, through due diligence, could not have been discovered in time to meet the applicable time period, misrepresentation or misconduct by the employer, or any other reason justifying equitable relief.
- (7) "Grievance" means:
 - (a) a complaint by a career service employee concerning any matter touching upon the relationship between the employee and the employer;
 - (b) any dispute between a career service employee and the employer;
 - (c) a complaint by a reporting employee that a public entity has engaged in retaliatory action against the reporting employee; and
 - (d) a complaint that the employer subjected the employee to conditions that a reasonable person would consider intolerable, including abusive conduct.
- (8) "Office" means the Career Service Review Office created under Section 67-19a-201.
- (9) "Public entity" means the same as that term is defined in Section 67-21-2.
- (10) "Reporting employee" means an employee of a public entity who alleges that the public entity engaged in retaliatory action against the employee.
- (11) "Retaliatory action" means to do any of the following to an employee in violation of Section 67-21-3:

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- (a) dismiss the employee;
- (b) reduce the employee's compensation;
- (c) fail to increase the employee's compensation by an amount that the employee is otherwise entitled to or was promised;
- (d) fail to promote the employee if the employee would have otherwise been promoted;

or

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

(12) "Supervisor" means the person:

- (a) to whom an employee reports; or
- (b) who assigns and oversees an employee's work.

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

67-19a-102. Work environment policy.

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

Section 3. 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 (4), equitable administration of the following benefits:
 - (i) long-term disability insurance;
 - (ii) medical insurance;

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- (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
- (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 [~~without an evidentiary hearing~~] described in Section 67-26-202 of a state executive branch agency employee.

(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 4. 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 of a state executive branch agency, as defined in Section 67-26-102,

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may, under Subsection 67-19a-202(3), initiate an administrative review of the findings of an abusive conduct investigation 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]~~ describe the reasons for the ~~[appeal]~~ administrative review 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]~~ of the abusive conduct investigation; and

(ii) an evidentiary hearing is not required.

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

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

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

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

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

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

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

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

or

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

(b) The office may uphold the findings of the abusive conduct investigation if the

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office determines that:

- (i) the findings are reasonable, rational, and sufficiently supported by the evidence; and
- (ii) the facts on which the findings are based are accurate.

(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:

- (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 5. 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 is known as the "Utah Public Employees Healthy Workplace Act."

Section 6. 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 of the same employer 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).

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(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 of an employer.

(6) "Employer" means:

(a) a state executive branch agency; or

(b) an independent entity, as defined in Section 63E-1-102.

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

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

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

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

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

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

Section 7. 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;

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(2) create a private right of action;

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

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

Section 8. 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 to provide and maintain a work environment free from abusive conduct.

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

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

(1) An employee may file a written complaint of abusive conduct with the human resources department of the employee's employer if the complaint is against an employee of the same employer as the employee filing the complaint.

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

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

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

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

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

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

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

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

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

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

Section 10. Section **67-26-203** is enacted to read:

67-26-203. Abusive conduct -- Training -- Policy.

(1) As used in this section:

(a) "Abusive conduct" means:

(i) verbal, nonverbal, or physical conduct of ~~an~~a covered employee to another covered employee of the same covered employer that, based on the severity, nature, or frequency of the conduct, a reasonable person would determine:

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

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

(C) exploits ~~an~~a covered employee's known physical or psychological disability.

(b) "~~Employee~~Covered employee" means:

~~(i) for the Legislature, a legislator or an employee of the Legislature;~~

~~(ii) for the judicial branch, a judge or an employee of the judicial branch; or~~

~~(iii) for a higher education entity, each governing member and each employee of the higher education entity.~~

(c) "Covered employer" means:

(i) the judicial branch; or

(ii) a higher education entity.

~~(d) "Higher education entity" means an ~~employer~~entity within the Utah System of Higher Education, including each member institution, the Board of Regents, and the office of commissioner of higher education.~~

~~(2) The Legislature shall, beginning on January 1, 2021:~~

~~(a) provide annual training to all employees of the Legislature on abusive conduct in the workplace; and~~

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~~(b) implement a policy prohibiting, and for reporting and resolving, abusive conduct within the legislative branch.~~

~~(3)2~~ The judicial branch shall, beginning on January 1, 2021:

(a) provide annual training to all covered employees ~~of the judicial branch~~ on abusive conduct in the workplace; and

~~(b) implement a policy prohibiting, and for reporting and resolving, abusive conduct within the judicial branch.~~

~~(4)3~~ Each higher education entity shall, beginning on January 1, 2021:

(a) provide annual training to all covered employees ~~of the higher education entity~~ on abusive conduct in the workplace; and

~~(b) implement a policy prohibiting, and for reporting and resolving, abusive conduct within the higher education entity.~~

~~(5)4~~ The judicial branch and each higher education entity shall, before May 1, 2021, submit to the Government Operations Interim Committee a copy of the policies described in Subsection ~~(3)2~~(b) and ~~(4)3~~(b).

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

Part 3. Training and Reporting

~~[67-19-44].~~ **67-26-301. 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~~

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

~~(b) The training described in Subsection (1)(a) 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 described in Section 67-26-202.~~

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

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

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

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

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

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

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

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

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

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

(ii) at least every other year 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, at the times described in Subsection (4)(a), provide notification to the employee 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;
 - (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~~

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

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

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

~~[(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], the following:~~

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

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

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

~~(B) 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[-]; and~~

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

Section 12. Effective date.

This bill takes effect on July 1, 2020.