

Anti-Harassment Reforms Working Draft

The following working draft proposal is premised on the fact that harassment in the workplace, including sexual harassment, is an employment issue, and there are many nuances that must be considered when drafting legislation. The General Assembly must develop well-reasoned policies for reporting, investigating, and taking action against those who violate the policies. Any policy must (i) provide an opportunity for the person making the allegation to remain anonymous; (ii) recognize the importance of confidentiality for both the accuser and the accused during the complaint and investigation process; and (iii) provide due process to both parties.

State Officials and Employees Ethics Act

This proposal applies to discrimination, harassment, and retaliation under the Illinois Human Rights Act or applicable policies of constitutional officer, legislative leader, or individual member.

ALLEGATIONS

- Require a mechanism for anonymous reporting. Require each constitutional officer and legislative leader, as well as the Joint Committee on Legislative Support Agencies, to designate a specific person to accept such complaints and review them. This is in addition to the ability of the executive and legislative branches to anonymously report to the Legislative Inspector General (“LIG”).
- The identity of individuals who report harassment, alleged victims, witnesses, and alleged harassers will be kept confidential to the extent possible and as permitted by law, consistent with a thorough and impartial investigation.
 - If the accuser wants to make the information public, that person maintains that right. However, the public body cannot comment or confirm any information until such time as an investigation has concluded.
- Conduct semi-annual reviews of employment experiences through the use of confidential surveys.
- For the legislature: Each caucus must appoint someone to handle receiving complaints, and that person cannot conduct the investigation, one of these people can be the Ethics Officer. This person is one who takes information and helps provide the person making an allegation with resources if necessary. They review initial complaints and determine what should be turned over for investigation. Recognize that any person appointed is going to be paid by the employer and there will always be a level of concern the person may not be independent, but person (if other than Ethics Officer) should be required to maintain confidentiality, similar to the Ethics Act.
 - Person receiving complaints must immediately advise employer if determines an immediate need to take action (e.g. accuser/accused must have office moved or job reassigned to protect the accuser; need to immediately put the accused on leave for protection of the accused and the office).
- Any person reporting an allegation shall be referred to a victim advocate and told they have a right to seek legal advice, be informed about the process, including but not limited to confidentiality restraints that keep an ethics officer from being able to inform a victim or complainant of the outcome of their complaint.
 - State employees have access to victim services under the Employee Assistance Program. Non-employees can be referred to victim advocate services or legal services.

LEGISLATIVE INSPECTOR GENERAL

- Require public posting of any vacancy in the Office of the Legislative Inspector General

- In the event of a vacancy in the Office of the Legislative Inspector General, the Legislative Ethics Commission must appoint a person to serve as Acting or Special Legislative Inspector General within 30 days of the vacancy.
- Allow the Executive Director to review and make recommendations for appointing a special LIG in the event of a vacancy.

INVESTIGATION

- Each constitutional officer and legislative leader must (i) employ someone to conduct investigations, provided the person cannot have duties that include defending the constitutional officer/leader in court, (ii) use an outside counsel, or (iii) turn the allegation over to the applicable Inspector General. Recognize that any person appointed is going to be paid by the employer and there will always be a level of concern the person may not be independent.
- Require the person to conduct a fair, impartial investigation and report to the employer within 90 days, unless there are extenuating circumstances (determined by the person investigating) and the parties are notified of the need for an extended investigation, but no longer than a 30 day extension. The accuser and the accused should be notified when an investigation is opened and when it is closed. They should be told any parameters for contact with each other or witnesses.
- A written report generated by an independent investigation should be provided the appropriate constitutional officer or leader and a copy given to the Legislative Inspector General, with a description of any punishment imposed. All reports remain confidential except if (i) the accused and the accuser agree to release, or (ii) the report results in a 3-day or more suspension or termination of the employee. Both parties have an opportunity to request redactions.
 - Exploring options for automatic publication of founded reports related to lawmakers.
- If the accuser decides to file a complaint with the Department of Human Rights of EEOC, the person shall notify the person conducting an investigation and the investigation shall be terminated.
- The employer maintains all ability to discipline any employee accused of harassment or discrimination.

REPORTING

- Require the quarterly report of each Inspector General to include the following (i) number of discrimination, harassment, sexual harassment, and retaliation complaints brought to the Inspector General, (ii) the number of discrimination, harassment, sexual harassment, and retaliation complaints brought to the identified intake person within each constitutional office or legislative leader, (iii) number of discrimination, harassment, sexual harassment, and retaliation investigations initiated by each Inspector General, (iv) the number of discrimination, harassment, sexual harassment, and retaliation investigations initiated internally by each constitutional officer or legislative leader, (v) the number of discrimination, harassment, sexual harassment, and retaliation investigations initiated internally by outside counsel for each officer or leader; and (vi) for any founded complaints, a summary of the allegation and the punishment imposed.
- Require each constitutional officer and legislative leader to provide information about complaints and investigations to the LIG for publication in the quarterly report.
- Amend the House Rules to require legislators who have personal knowledge of sexual harassment to report allegations to their Caucus ethics officer
- Require Ethics Officers to report complaints that come to them and what action was taken, keeping all identifying information confidential, including those turned over to outside counsel, the LIG, or other venue.

Illinois Human Rights Act

- Extend the time for filing civil rights violations to 365 days (currently 180 days).
- Expand the Act to include specific scenarios applicable to political committees
 - Expand the definition of “employee” to include individuals providing services to a political committee for which they provide in-kind services or receive any form of payment, regardless of the establishment of an employer-employee relationship.
 - Clarify the definition of “employee” to allow “immediate personal staff” to be employees and able to file actions under the IHRA.
 - Expand the definition of “employer” to include political committees, regardless if the committee has any employees (this covers in-kind situations).
 - Provide a definition of “political committee” – reference the Election Code
- Require DHR to maintain a sexual harassment advocate who will work with any person making an allegation that does not have private counsel or union representation.

Election Code

- Mandate all political committees maintain discrimination and harassment policies, provided political committees may make political considerations when making hiring decisions
- Mandate an established political party offer training for all political committees, including the staff of campaigns (consultants, full and part time employees, interns).

All Public Bodies

- Prohibit all state constitutional officers, legislators, and other public bodies from resolving discrimination or harassment cases using arbitration.
- Prohibit any public officer from using public funds to make payments to any employee, volunteer, or independent contractor in exchange for silence or inaction related to allegations of sexual harassment.
- If a public body is going to enter into a confidential settlement agreement related to discrimination or harassment of any kind, the following must occur: (i) the public body provide 7-day public disclosure of a summary of the allegations and agreement (without any identifying information), and (ii) the public body approves the settlement in a public meeting, or if a constitutional officer or legislator, the individual must personally approve any settlement related to their office.

Open Questions

- Acknowledging that the employment relationships, and often lack thereof, in the Legislative branch make traditional sexual harassment and discrimination findings difficult, SB 402 made sexual harassment a violation of the State Officials and Employee Ethics Act. In examining potential changes, the Task Force is open to the question of whether there may be a better avenue to deal with the non-traditional employment relationships of both state and non-state work done in the legislative branch.
- Rights of victims (not necessarily the same as a complainant under the Ethics Act) in the process under the Ethics Act, multiple legislative proposals have been filed and conversations have begun with the Office of the Executive Inspector General to figure out the best way to provide aid to persons utilizing this avenue without compromising the independence and neutrality of the Inspector General’s office.

- For example allowing victim to file a victim impact statement along with LIG report to the LEC.
- Recommending that the LEC review their rules to allow for the LIG to be able to conduct issue a subpoena without prior consent of the LEC.
- Adding additional punishment options to House Rules for lawmakers such as reprimand or censure for violations of the Ethics Act.