

Halting Harassment



The #MeToo movement and recent scandals have lawmakers working to end sexual harassment sine die.

BY JON GRIFFIN

Jon Griffin is a program principal in NCSL's Center for Legislative Strengthening.

Sexual harassment is pervasive. Even in statehouses. Even in the statehouse that, up until last year, many considered a leader in preventing it.

California lawmakers went beyond federal guidelines in 2006 by requiring sexual harassment training in statute. The law requires any employer with 50 or more employees, as well as all public employers and the Legislature, to conduct two hours of sexual harassment training for all employees in a supervisory position. It also requires that all legislative employees receive an informational brochure about harassment and that every workplace have a written policy in place.

The Legislature went even further and required all legislators and legislative employees to attend harassment training. And, finally, the Assembly created a bipartisan Subcommittee on Harassment, Discrimination, and Retaliation Prevention and Response, to hear complaints.

Despite these actions, in October 2017—a week after allegations of sexual assault and harassment against movie producer Harvey Weinstein first surfaced—a letter was published in various newspapers across the state claiming

the Legislature had a “pervasive” culture of sexual harassment that included nonconsensual touching, inappropriate comments and sexual innuendo. It was signed by 140 women who worked in and around the statehouse, including six current and two former legislators.

“The letter shows that sexual harassment is as prevalent in the Capitol as it is anywhere else in society,” Anthony Rendon (D), speaker of the California Assembly, said in response. “The Assembly takes our responsibility to prevent any sexual harassment very seriously, both in terms of training and reporting.”

The Legislature then created a joint Subcommittee on Sexual Harassment Prevention and Response within the Joint Committee on Rules to examine the issues.

The subcommittee met seven times in as many months and surveyed legislative employees on the climate in the statehouse. Subcommittee members wrote a new, joint legislative policy to replace the previous chamber-specific ones and, on June 25, published their final recommendations, which are being implemented now.

One significant recommendation was the creation of an independent Legislative Work-

Policy and Training Recommendations

Until sexual harassment is completely eradicated from the workplace, state legislatures will rely on policies and laws to decrease the chances for it to occur or go unreported.

It's important to tailor policy to fit a legislature's needs and resources, but the great majority handle sexual harassment in one or both of two ways: (1) by developing internal policies that prohibit and punish harassment, and (2) by providing training for employees on harassment prevention. In October 2017, NCSL surveyed the 50 states to learn more about legislative policies and training practices. After compiling the results and consulting with experts in the field, NCSL developed the following recommendations.

A strong sexual harassment policy should:

- Be easy to understand and clearly define "sexual harassment."
- List examples of specific behaviors considered inappropriate.
- Apply equally to legislators and staff, as well as nonemployees, such as lobbyists and outside vendors.
- Offer a diversity of contacts within the legislature to whom sexual harassment can be reported, allowing the complainant to bypass reporting to his or her direct supervisor.
- Clearly prohibit any kind of retaliation for filing a claim.
- Promise confidentiality, to the extent possible, for all parties involved.
- Give specific examples of potential discipline, if warranted.
- State the possibility of involving parties outside the legislature to assist in any investigation, if it is warranted or requested.
- Offer an appeals procedure.
- Contain a statement informing the complainant that she or he can also file a complaint with the Equal Employment Opportunity Commission or the state's human rights commission, or both.

A strong policy is just one part of a comprehensive approach to reducing sexual harassment. Another major aspect is training. Legislatures are unlike traditional workplaces. The amount of public interaction, the unique power dynamics and the diversity of employee backgrounds require training tailored to the legislative workplace.

A strong legislative training program should:

- Be conducted in a classroom setting with a live trainer.
- Be mandatory.
- Include a summary of the national laws on sexual harassment, as well as state- and legislature-specific policies.
- Include the legislative HR director or others who receive sexual harassment complaints.
- Be offered at new member or new employee orientations.
- Be strongly supported by the legislative leaders.
- Incorporate case studies and examples of harassment, specifically highlighting situations unique to the legislature.
- Be dynamic, varied by topics covered and presented in fresh, new ways from year to year.
- Ask attendees to evaluate it, to ensure the training is meeting their needs.
- Be offered to legislative staff and legislators separately.

As with policies, there are practical considerations regarding staff size and budget that can affect who conducts training and when. Dynamic annual training with a focus on the legislative environment should ensure optimal results.

place Conduct Unit to receive, investigate and respond to complaints. The unit staff will have specialized workplace investigation training on sexual harassment and discrimination. A person making a complaint will now have the option of addressing the problem independently or through a formal process and will be updated regularly on the status of the investigation.

The subcommittee also recommended developing a comprehensive training program, strengthening the statement denouncing retaliation and making reporting as straightforward and accessible as possible.

In addition, California lawmakers moved to impose civil and criminal liability on any legislator or legislative employee who interferes with or retaliates against an employee for making a sexual harassment claim.

How to Change a Culture

California is not the only state to review the ways its legislature prevents and responds to sexual harassment complaints. The overwhelmingly positive response to the #MeToo and #TimesUp movements

has demonstrated constituents' commitment to making workplaces, including statehouses, safe for all employees.

Since the beginning of the year, state lawmakers have been busy reworking their internal policies, training programs and investigative processes. They have created an unprecedented amount of legislation—more than 125 bills across the country—to

examine and improve the culture in their statehouses. Thirteen states have set up committees to examine sexual harassment issues.

Even states without current accusations of harassment considered strengthening their prevention efforts. Female lawmakers in Idaho, for example, signed a letter to their legislative leaders asking for mandatory training, even though no complaints

have been filed there recently.

“Sexual harassment is inappropriate in any workplace setting. It would be especially disappointing if it were to take place in the Idaho Legislature—where each year we gather to conduct the people’s business,” Representative Caroline Nilsson Troy (R) wrote in the letter, signed by 13 of her female colleagues.



Representative
Caroline Nilsson
Troy
Idaho

Lawmakers have also had to respond to specific cases.

Representatives in Arizona expelled one of their own for “a pattern of sexual harassment toward women.” A month later Colorado legislators did the same. Fourteen legislators have resigned due to sexual harassment allegations.

An area of particular concern has been the actions of lobbyists, contracted employees and other third parties, both as potential victims and as perpetrators of sexual harassment. Georgia passed legislation this year requiring lobbyists to certify that they received the legislature’s sexual harassment policy and agree to abide by it. Maryland changed its training requirements for lobbyists and added interns, pages and members of the media to the list of parties covered by the policy. The Maine Legislature also passed a law requiring all legislators, staff and lobbyists to attend a training at the beginning of every legislative session. Illinois enacted mandatory training for lobbyists as a part of its Lobbyist Registration Act.

The Importance of Responding

The Illinois General Assembly took the unique step of creating a sexual harassment hotline, maintained by the Illinois Department of Human Rights. The hotline’s purpose is to help people who believe they’ve suffered harassment find counseling, assistance in filing complaints and other services. Callers may anonymously report sexual harassment in any place of employment, public or private.

Maryland requires the use of an independent investigator for all complaints against legislators, unless the alleged victim objects. Washington created a state Wom-

Defining Sexual Harassment



Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. It includes requests for sexual favors, sexual advances or other sexual conduct when (1) submission is either explicitly or implicitly a condition affecting academic or employment decisions; (2) the behavior is sufficiently severe or pervasive as to create an intimidating, hostile or repugnant environment; or (3) the behavior is unwanted and persists despite objection by the person to whom the conduct is directed.

Examples include:

- Unwanted sexual statements: Dirty jokes, comments on physical attributes, spreading rumors about someone’s sexual activity or performance, talking about one’s sexual activity in front of others, displaying or distributing sexually explicit drawings, pictures and written material.
- Unwanted personal attention: Texts, phone calls, visits, pressure for sexual favors, pressure for unnecessary personal interaction and pressure for dates.
- Unwanted physical or sexual advances: Touching, hugging, kissing, fondling, touching oneself sexually for others to view or other sexual activity.

—Equal Employment Opportunity Commission and Office of Institutional Equity, University of Michigan

en’s Commission to work with the Legislature and state agencies to assess programs that affect women, including sexual harassment policies. Indiana passed legislation that mandates sexual harassment training for legislators and creates a subcommittee of the Legislative Council to review the Legislature’s sexual harassment policy. Virginia passed legislation mandating training

for legislators and legislative employees.

The #MeToo and #TimesUp movements have brought legislatures to a unique moment in time. Many lawmakers are using the opportunity not only to revise and correct their sexual harassment policies, but also to rethink the culture of their workplaces and ensure that they are safe and respectful for everyone.