

ABUSIVE CONDUCT REPORTING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: Daniel W. Thatcher

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, 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 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.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides a special effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 [67-19a-101](#), as last amended by Laws of Utah 2018, Chapter 390

36 [67-19a-102](#), as enacted by Laws of Utah 2018, Chapter 390

37 [67-19a-202](#), as last amended by Laws of Utah 2018, Chapter 390

38 [67-19a-501](#), as enacted by Laws of Utah 2018, Chapter 390

39 ENACTS:

40 [67-26-101](#), Utah Code Annotated 1953

41 [67-26-102](#), Utah Code Annotated 1953

42 [67-26-103](#), Utah Code Annotated 1953

43 [67-26-201](#), Utah Code Annotated 1953

44 [67-26-202](#), Utah Code Annotated 1953

45 [67-26-203](#), Utah Code Annotated 1953

46 RENUMBERS AND AMENDS:

47 [67-26-301](#), (Renumbered from [67-19-44](#), as last amended by Laws of Utah 2018,
48 Chapter 390)



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

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

52 **[67-19a-101](#). Definitions.**

53 As used in this chapter:

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

55 [67-26-102](#).

56 (2) "Administrator" means the person appointed under Section 67-19a-201 to head the
57 Career Service Review Office.

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

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

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

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

67 (7) "Grievance" means:

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

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

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

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

75 (8) "Office" means the Career Service Review Office created under Section
76 67-19a-201.

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

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

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

82 (a) dismiss the employee;

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

87 or

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

89 (12) "Supervisor" means the person:

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

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

93 **67-19a-102. Work environment policy.**

94 As recognized and provided in Section [~~67-19-44~~] [67-26-201](#), it is the policy of the

95 state of Utah to provide and maintain a work environment free from abusive conduct.

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

97 **67-19a-202. Powers -- Scope of authority.**

98 (1) The office shall serve as the final administrative body to review a grievance from a

99 career service employee and an agency of a decision regarding:

- 100 (a) a dismissal;
- 101 (b) a demotion;
- 102 (c) a suspension;
- 103 (d) a reduction in force;
- 104 (e) a dispute concerning abandonment of position;
- 105 (f) a wage grievance if an employee is not placed within the salary range of the
- 106 employee's current position;
- 107 (g) a violation of a rule adopted under Chapter 19, Utah State Personnel Management
- 108 Act; or
- 109 (h) except as provided by Subsection (4), equitable administration of the following

110 benefits:

- 111 (i) long-term disability insurance;
- 112 (ii) medical insurance;
- 113 (iii) dental insurance;
- 114 (iv) post-retirement health insurance;
- 115 (v) post-retirement life insurance;
- 116 (vi) life insurance;
- 117 (vii) defined contribution retirement;
- 118 (viii) defined benefit retirement; and
- 119 (ix) a leave benefit.

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

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

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

- 126 (a) a personnel matter not listed in Subsections (1) through (3);
- 127 (b) a personnel matter listed in Subsections (1) through (3) that alleges discrimination
128 or retaliation related to a claim of discrimination that is a violation of a state or federal law for
129 which review and action by the office is preempted by state or federal law; or

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

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

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

136 (iii) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21,

137 Public Employees' Long-Term Disability Act.

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

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

141 **67-19a-501. Procedural steps to be followed in an administrative review of an**
142 **abusive conduct investigation.**

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

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

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

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

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

155 (ii) an evidentiary hearing is not required.

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

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

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

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

163 [~~(4) (a) If the administrator determines that the investigator's findings are not~~

164 reasonable, rational, and sufficiently supported by the record, the administrator may overturn
165 the findings and remand to the agency for appropriate action.]

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

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

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

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

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

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

177 (ii) the facts on which the findings are based are accurate.

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

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

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

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

186 (ii) documents that any party provides;

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

188 (iv) the office's determination.

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

190 **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 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).

(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:

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

246 **67-26-202. Abusive conduct complaint, investigation, administrative review**
247 **process.**

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

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

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

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

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

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

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

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

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

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

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

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

275 **67-26-203. Abusive conduct -- Training -- Policy.**

276 (1) As used in this section:

277 (a) "Abusive conduct" means:

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

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

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

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

285 (b) "Covered employee" means:

286 (i) for the judicial branch, a judge or an employee of the judicial branch; or

287 (ii) for a higher education entity, each governing member and each employee of the
288 higher education entity.

289 (c) "Covered employer" means:

290 (i) the judicial branch; or

291 (ii) a higher education entity.

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

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

296 (a) provide annual training to all covered employees on abusive conduct in the
297 workplace; and

298 (b) implement a policy prohibiting, and for reporting and resolving, abusive conduct

299 within the judicial branch.

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

301 (a) provide annual training to all covered employees on abusive conduct in the
302 workplace; and

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

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

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

310 **Part 3. Training and Reporting**

311 ~~[67-19-44].~~ **67-26-301. Abusive conduct training.**

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

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

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

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

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

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

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

323 ~~[(c) "Physical harm" means the impairment of a person's physical health or bodily~~
324 ~~integrity, as established by competent evidence.]~~

325 ~~[(d) "Psychological harm" means the impairment of a person's mental health, as~~

326 established by competent evidence.]

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

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

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

334 [(5)] (1) (a) The department shall provide biennial training to educate all state
335 executive branch agency employees and supervisors about how to prevent abusive workplace
336 conduct.

337 (b) The training described in Subsection (1)(a) shall include information on:

- 338 (i) what constitutes abusive conduct and the ramifications of abusive conduct;
339 (ii) resources available to employees who are subject to abusive conduct; and
340 (iii) the [~~grievance~~] abusive conduct complaint process described in Section [67-26-202](#).

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

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

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

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

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

353 ~~[(6)]~~ (3) (a) Each ~~[state agency]~~ employer shall provide professional development
354 training ~~[approved by the department]~~ to promote:

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

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

361 ~~[(7)]~~ (4) (a) Employers shall provide and employees shall participate in the training
362 described in ~~[-Subsections (5) and (6)]~~ this section:

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

365 (ii) at least every other year after the employee begins employment.

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

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

372 ~~[(8)]~~ (5) The department may use money appropriated to the department or access
373 support from outside resources to:

- 374 (a) develop policies against workplace abusive conduct; and
- 375 (b) enhance professional development training on topics such as:
 - 376 (i) building trust;
 - 377 (ii) effective motivation;
 - 378 (iii) communication;
 - 379 (iv) conflict resolution;

- 380 (v) accountability;
- 381 (vi) coaching;
- 382 (vii) leadership; or
- 383 (viii) ethics.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

407 Section 12. **Effective date.**
408 This bill takes effect on July 1, 2020.