

HOUSE No. 4263

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES

REPORT OF THE COUNSEL TO THE HOUSE OF REPRESENTATIVES SUBMITTING RECOMMENDATIONS FOR UPDATING THE STRUCTURES, POLICIES, PROCEDURES AND OPERATIONS OF THE HUMAN RESOURCES FUNCTION FOR THE HOUSE OF REPRESENTATIVES, INCLUDING THOSE THAT RELATE TO ENSURING A WORKPLACE FREE OF SEXUAL HARASSMENT AND RETALIATION.

(As authorized under House Order No. 3983)

March 1, 2018

Massachusetts House of Representatives

Report and Recommendations on the Human Resources Function of the House of Representatives and the Prevention of Sexual Harassment and Retaliation

Prepared by Counsel to the House of Representatives
pursuant to House, No. 3983 of 2017

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A. OBJECTIVE

This report, submitted in response to the Order filed by Speaker Robert A. DeLeo and adopted by the House of Representatives (“House”) on October 27, 2017, provides an overview of House Counsel’s comprehensive review of existing structures, policies, procedures and operations of the House’s human resources function and makes corresponding recommendations for improvement. The objective of both the underlying review and the recommendations that follow is, on a broad scale, to preserve and enhance the right of all Members, officers, interns and employees of, and visitors to, the House of Representatives (“all parties”) to work in a professional environment free of discriminatory harassment, particularly sexual harassment¹, and to ensure that, in all instances, House policies and procedures prioritize the safety and respectful treatment of all parties. To accomplish this objective, the recommendations contained in this report are designed to:

- improve the existing human resources structures, policies and procedures, including those relating to sexual harassment and retaliation;
- provide a transparent human resources structure that encourages reporting of sexual harassment by ensuring that all parties are aware of their right to identify concerns or to file a complaint regarding harassment or any inappropriate behavior by any party;
- establish and maintain uniform procedures for receiving and investigating complaints that are flexible enough to address the specific needs of the complainant and the particular circumstances of the complaint, while also safeguarding confidentiality and ensuring due process for all parties;
- promote a culture of accountability among all Members, officers and employees of the House, particularly those with supervisory authority;²
- enhance employee morale; and
- empower victims to report sexual harassment without any fear of retaliation or a detrimental impact on their career in the House by establishing confidence in a fair and impartial application of all human resources policies and procedures no matter the identity of the complaining party or the accused.

¹ While House Counsel’s review focused largely on the issue of sexual harassment, the recommendations herein are designed to not only appropriately address and limit incidents of sexual harassment but also to address and limit all forms of discrimination and other illegal or inappropriate conduct.

² Those with supervisory authority include Members, Staff Directors and other employees with supervisory authority.

To that end, the recommendations consider and seek to accommodate the unique nature of the House as an employer and institution comprised of elected officials, as well as various categories of legislative staff (e.g., legislative aides, administrative aides, committee staff and professional staff).

B. THE HOUSE OF REPRESENTATIVES AS AN EMPLOYER

1. Members of the House

As a chamber of the General Court, the House is a unique place of employment in many ways. First and foremost, the House as a deliberative body is made up of 160 independently elected individuals. Members of the House are not employees in the traditional sense. They are elected biennially as “a representation of the people” of the Commonwealth; as such, Members are perhaps better described as “employees” of the voters who elected them.³

As currently constituted, the House includes male and female Members, as well as Members of multiple races and ethnicities. The House also has Members of widely varying ages; with Members in their twenties as well as in their seventies and eighties. While the demographics of the House may not reflect the demographics of the full population of the Commonwealth with perfect parity, it is nonetheless a body that has become increasingly diverse over time.⁴

Unique Constitutional Structure for Members

The House has the exclusive authority to judge the qualifications of its Members and to settle its own rules and orders of proceeding.⁵ Among these many powers, the House has the plenary authority and responsibility to discipline its own Members.⁶ No other branch of government, and indeed no one but the Members themselves, can discipline a Member of the House in his or her official capacity for behavior that violates House Rules or otherwise implicates the Member’s qualifications for office.⁷

³ See Mass. Const. Pt. 2, c. 1, § 3, art. I.

⁴ See National Conference of State Legislatures, *Who We Elect: The Demographics of State Legislatures* (2015) available at <http://www.ncsl.org/research/about-state-legislatures/who-we-elect.aspx>.

⁵ Mass. Const. Pt. 2, c. 1, § 3, art. X; see also *Paisner v. Attorney General*, 390 Mass. 593, 599-601 (1983) (power to govern internal House matters and proceedings is granted exclusively to the House); *Hiss v. Bartlett*, 69 Mass. 468, 472 (1855).

⁶ See *Paisner* 390 Mass. at 599-601; *Hiss*, 69 Mass. at 472-75; see also *Coffin v. Coffin*, 4 Mass. 1, 7 (1808) (the House “alone can judge of those rules and orders, enforce their observance, and punish a member for any violation of them.”).

⁷ See *Dinan v. Swig*, 223 Mass 516, 519 (1916) (“[T]he Constitution plainly gives to each branch of each successive Legislature an untrammelled power to proceed in its own manner and according to its own judgment” regarding the “settlement of controversies touching the...qualification of its own members, and the ascertainment of all facts relative thereto.”); *Paisner*, 390 Mass at. 600, citing *United States v. Ballin*, 144 U.S. 1 (1892) (“Legislative rule-making authority is a continuous power absolute and beyond the challenge of any other tribunal.”); *Opinion of the*

The House has broad latitude to establish its internal proceedings, and does so in a number of ways. The House has historically established Rules at the beginning of each legislative session to govern the structures and proceedings of the chamber.⁸ The Rules are established by House Order.⁹ They often, but not always, remain the same in form and content for the duration of the session to which they apply.¹⁰

2. Employees of the House: Historical Perspective

Prior to the 1970s, the General Court was minimally staffed. There were few full-time employees overall and, in particular, most committees did not have full-time professional staff.¹¹ In the late 1960s, a number of special commissions were established to make recommendations to improve the efficiency of the General Court. Those commissions recommended professionalizing the staff of the institution – including increasing staffing levels, providing training, establishing merit-based hiring, and creating uniform employee rules and classifications to ensure that the Legislature functioned independently in a system of checks and balances.¹² In 1979, one part of the compromise to reduce the size of the House from 240 Members to 160 Members was to increase the professional staffing levels, and as a result the number of full-time staff for committees and individual Members began increasing in the late 1970s and early 1980s.¹³

Justices to the Senate, 375 Mass. 795, 815 (1978) (“The constitutional authority of each branch of the Legislature to judge the elections, returns, and qualifications of its members is exclusive, comprehensive, and final.”).

⁸ See Cornelius Dalton, et. al, *Leading the Way: A History of the Massachusetts General Court 1629-1980*, 26-28 [hereinafter *Leading the Way*]. The Colonial General Court adopted parliamentary rules “from time to time, as the need arose.” For example, in 1629, the Colonial General Court adopted an order to fine members who had ‘private conferences’ during session. *Id.* After the separation of the House and Senate in 1644, the House continued to adopt its own rules by order as needed; the House banned smoking in the House Chamber in 1646. *Id.* Similarly, following the Revolutionary War, the House continued to adopt rules and published a General Court manual that included House, Joint and Senate Rules. See e.g. *Rules and orders to be observed in the House of Representatives for the year 1802; A manual for the use of the General Court (1858)*.

⁹ See House, No. 2018 (2017) (House Rules for 2017-18 session); see also House, No. 3000 (1981) (House Rules for 1981-82 session); House No. 1000 (1991) (House Rules for 1991-92 session); House, No. 2002 (2001) (House Rules for 2001-02 session).

¹⁰ See e.g. House, No. 6826 (1983) (adding House Rules 17A, 17B, 19, 19A, 23A, and 33A after adoption of permanent House Rules in the 1983-84 session); see also House No. 4457 (2016) (order providing special amendment filing procedures for House, No. 4413, *An Act relative to job creation, workforce development and infrastructure investment*).

¹¹ Second Interim Report of the Special Committee Authorized to Make an Investigation and Study of the Present Practices of the General Court and Methods of Improving its Efficiency, House, No. 4341 (1967); Report of the Joint Special Committee Authorized to Study the Sergeant-At-Arms Report on Legislative Employees and to Submit Recommendations to Improve Legislative Personnel Administration and Efficiency, House No. 4386 (1968).

¹² *Id.*

¹³ See *Leading the Way* at 337-338; 365-366 (detailing the “intense lobbying and bitterness over the fight” to reduce the size of the House from 240 Members to 160 Members and argument that staffing levels could be increased as a result of the reduction); St. 1978, c. 367, s. 2, item 0127-0020 (providing appropriation for dedicated legislative aides selected by each member in fiscal year 1979).

Prior to establishment of the Committee on Personnel and Administration, employee conduct and general human resources functions were regulated by the Committee on Rules, which was chaired by the Speaker into the 1990s.¹⁴ The hiring and employment processes were, as a whole, extremely decentralized. Individual offices, such as House Ways and Means, had their own line items in the budget, which included their office payroll and established the number of permanent positions in the offices.¹⁵ Benefits were also handled by individual offices, e.g., the Clerk's office handled payroll and health insurance for anyone employed in that office.¹⁶ Sick leave and vacation policies were not uniform, nor were compensation schedules.¹⁷

Speaker Thomas W. McGee appointed a personnel director during his tenure (1975 – 1984) to centralize the management of benefits and payroll, and the office was maintained by Speaker George Keeverian when he became Speaker in 1985.¹⁸ During Speaker Keeverian's tenure, the House established the Committee on Personnel and Administration through House Rule 17C.¹⁹ On July 1, 1985, the newly formed Committee on Personnel and Administration produced a report that detailed the committee's concerns with the House personnel system and presented plans for reform.²⁰ The plan included a number of standardized policies and procedures that were adopted by the committee in 1985.²¹ In 1987, the first House Employee Handbook was published, which included many of the committee's standardized policies and procedures from the 1985 report.²² Since its publication, the House Employee Handbook has been updated

¹⁴ *Leading the Way* at 343; see e.g. List of the Committees of the General Court of Massachusetts (1981) (recognizing Speaker as Chair of Committee on Rules).

¹⁵ See e.g. St. 1966, c. 411, s. 2, items 0102-02 through 0102-09 (appropriating funds directly to individual offices with limitations on the number of permanent employees that could be employed by the office); St. 1978, c. 367, s. 2, items 0122-0000 through 0127-0020 (appropriating funds directly to individual offices with limitations on the number of permanent employees that can be employed by the office); St. 1986, c. 206, s. 2, items 0122-0000 through 0127-0020 (appropriating funds directly to individual offices without limitations on permanent employees, except Cape and Islands district aides).

¹⁶ See House No. 4386 (1968) (establishing the Special Committee's concerns with a decentralized personnel system and recognizing a centralized payroll system as worthy of further review).

¹⁷ *Id.*; see also House Committee on Personnel and Administration, *Report to the House Of Representatives House Personnel System And Allocation Of Office Space* (July 1, 1985) [hereinafter *1985 Personnel Report*] (detailing inconsistent salary schedules and proposing reform).

¹⁸ *Public Officers of Massachusetts 1983-1984*, at 261 ("Jeanne M. Foley. . . Director of Personnel, Payroll and Computer Departments . . . Occupation: Speaker's Office 1960-'84"); *1985 Personnel Report* at Foreword (recognizing Thomas Raftery as Director of Personnel).

¹⁹ House Rule 17C (adopted January 11, 1985).

²⁰ *1985 Personnel Report*.

²¹ *Id.* at Appendix A. Personnel Philosophy of the Massachusetts House of Representatives; Appendix B. Basic Requirements of an Equitable Salary Program for House Staff; Appendix F. Benefits for Employees of the House of Representatives (Effective July 1, 1985); Appendix G. Code of Ethics for Members, Officers, and Staff of the House of Representatives. The committee also included a Request for Proposal for a Classification and Compensation study to develop job descriptions, a staff classification plan and a standardized compensation schedule. *Id.* at Appendix C.

²² Speaker George Keeverian & Chairman Michael J. Rea, Jr., Commonwealth of Massachusetts, House of Representatives, Committee on Personnel and Administration, *House Employee Handbook* (1987); see also Commonwealth of Massachusetts, House of Representatives, Committee on Personnel and Administration, *Progress Report 1987-1988* (describing handbook implementation).

regularly and continues to serve as the centralized resource for policies and procedures relevant to the House human resources function.²³

3. Employees of the House: Current Overview

Structure & Demographics

The House currently employs approximately 480 individuals at the staff level.²⁴ Employees are generally classified as: legislative aides or administrative aides, who are assigned to a specific Member; support staff, who may be assigned to a specific Member or office; committee staff, who are assigned to a particular House or Joint Committee; and professional staff, who typically work in various offices throughout the House and support both House Members and staff (e.g., House Clerk).

As currently constituted, the House staff is approximately 55% female and approximately 45% male.²⁵ House employees also vary widely in age, from 19 to 80; however, the majority of House staff, approximately 56%, is under the age of 35.²⁶

Attrition

The House has a markedly high rate of attrition. Between January 1, 2010 and December 31, 2017, approximately 860 people left House employment. At the current staffing levels, this is an attrition rate of almost 180% over 8 years. There are many factors that we believe may contribute to this high turnover, the vast majority of which are innocuous and beyond the scope of this review. However, we do not – and indeed in light of the recent public discourse – *cannot* discount the possibility that some employees may have left the House because they were dissatisfied with their workplace.

²³ See e.g. Speaker Charles F. Flaherty & Chairman Edward A. LeLacheur, Commonwealth of Massachusetts, House Of Representatives, Committee On Personnel And Administration, *Employee Handbook*; Speaker Thomas M. Finneran & Chairman James R. Miceli, Commonwealth of Massachusetts, House Of Representatives, Committee On Personnel And Administration, *Employee Handbook*; Speaker Salvatore F. DiMasi & Chairman James R. Miceli, Commonwealth of Massachusetts, House Of Representatives, Committee On Personnel And Administration, *Employee Handbook* (2007); Speaker Robert A. DeLeo & Chairman William C. Galvin, Massachusetts House Of Representatives, Committee On Personnel And Administration, *Employee Handbook The 188th Session of the General Court 2013-2014*.

²⁴ Since at least 2010, the House has maintained its staff level at or around this number. The House and Senate also jointly employ approximately 30 individuals.

²⁵ House employees are asked to self-identify as male or female at the beginning of their employment, and that information is maintained in the HR/CMS system. The system allows only for binary gender reporting. We recognize that House employees may not all identify as gender-binary and report these statistics purely as they are currently captured in the HR/CMS system.

²⁶ House employees are not asked to self-identify in any racial or ethnic categories at the beginning of their employment and the House does not otherwise collect the information. The omission of racial or ethnic demographics in this report is purely the result of this limited information.

4. Previous Complaints

The House promptly and thoroughly investigates all human resources related complaints, including those alleging sexual harassment, other discriminatory treatment or otherwise inappropriate behavior. This report, however, will not seek to quantify or qualify complaints of sexual harassment, other discriminatory treatment, or otherwise inappropriate behavior that the House has received over the years; nor to summarize the investigation or resolution of any such complaints. We instead take this opportunity to renew our commitment to creating an environment in which all Members and employees of the House, and all visitors to the House, are treated with dignity and respect.

C. REVIEW IMPETUS AND PROCESS

1. Current Issues Impacting the House and Other Employers

Over the last several months, substantial light has been shed on the recurring incidence of sexual harassment in workplaces around the country in both the public and private sectors. The #MeToo movement has led to substantially more women coming forward to report sexual harassment, and has highlighted the common workplace power dynamics that often prevent employees who are victims of sexual harassment from reporting such harassment for fear of losing their job or harming their careers. This proliferation of disclosures of sexual harassment around the country, including anonymous reports of harassment occurring in and around the Massachusetts State House, highlights the importance of the review and the recommendations that follow.²⁷

Indeed, it is all the more important that the House strives to address the issue of sexual harassment head on because the House has a Constitutional duty to serve as a “representation of the people.”²⁸ Inherent in this duty is a responsibility to maintain accountability, integrity and public trust and confidence. To that end, House Members and House employees are, and should be, held to a higher standard. Moreover, the actions of individual public employees are inexorably construed as reflecting the standards or cultures of the public institutions in which they serve and our public institutions as a whole. Recent media reports make clear that the House must do everything in its power not only to maintain the trust of the people of the Commonwealth but also to strengthen the morale of the Members and employees who make up the institution.

²⁷ See Yvonne Abraham, *Women describe climate of harassment at Mass. State House*, Boston Globe, October 27, 2017, available at <https://www.bostonglobe.com/metro/2017/10/27/the-stories-sexual-harassment-beacon-hill-are-overwhelming/0a4T5VADqH9ffipiXfpwGO/story.html>.

²⁸ Mass. Const. Pt. 2, C. 1, § 3, art. I (“There shall be, in the legislature of this commonwealth, a representation of the people . . . founded upon the principle of equality.”).

2. House, No. 3983

On October 27, 2017, the House adopted an Order filed by Speaker Robert A. DeLeo instructing House Counsel to engage in a comprehensive review of the House’s human resources function, including its policies, procedures and other structures that relate in any way to ensuring a workplace free of sexual harassment and retaliation.²⁹ The Order, which is included as Appendix A, required House Counsel’s recommendations for enhancements to existing structures, policies and procedures. Speaker DeLeo also made a statement with the Order expressing his singular response to the public allegations of harassment occurring in and around the State House. That statement is spread upon the records of the House and is included herein as Appendix B.

As outlined in the Order, the goals of this review and the attendant recommendations are to: (1) “increase awareness of the available avenues for reporting concerns or complaints and to ensure thorough investigations and appropriate discipline where investigations identify violations of House Rules or policies,” (2) promote “professional and consistent treatment of complaints of sexual harassment or retaliation,” including “recordkeeping practices that ensure investigators have access to any records of prior complaints,” (3) impose “appropriate remedial and disciplinary measures that meet the House’s commitment to a workplace free of sexual harassment and retaliation at all levels,” (4) “ensure that the House’s commitment to a workplace free of sexual harassment and retaliation is fully reflected through the structures, policies and procedures of the House,” and (5) “instill a culture of accountability focused on ensuring a professional and safe working environment” for all parties.

Engaging Consultants/Outside Counsel

To assist with its review, House Counsel retained assistance from the following private attorneys: (i) Martha Coakley, Esq., former Massachusetts Attorney General and Middlesex County District Attorney, now with Foley Hoag, LLP, (ii) Paul Holtzman, Esq. with Krokidas & Bluestein, LLP, (iii) Jill Brenner Meixel, Esq. with Krokidas & Bluestein, LLP, and (iv) Jennifer Kirby, Esq. with Foley Hoag, LLP, referred to collectively as “outside counsel.” In addition to their experience and expertise in employment law, the public sector, investigations and compliance issues, outside counsel brought an independent perspective to the review process. Specifically, outside counsel separately assessed the adequacy and functioning of each aspect of the current House policies and recommended improvements and reforms where necessary.

3. Listening Sessions and Stakeholder Meetings

It was apparent from the outset that we must hear directly from the Members and employees of the House regarding their experiences and perceptions. It was equally clear that, during this

²⁹ House, No. 3983 (2017).

national conversation on the issue of sexual harassment, we would be well served to meet with other practitioners and professionals to discuss best practices as well as promising new techniques.

Member Listening Sessions

We conducted four listening sessions to solicit input from Members. Members were asked to share their concerns, observations and recommendations. While attendance was voluntary, the sessions were well attended; with multiple Members participating in more than one session.

As a whole, these listening sessions elicited a variety of insights from the individuals who ultimately possess the direct authority and means to shape the House as an institution and as an employer.

In the interest of brevity, this report will not attempt to reproduce the entirety of the input received from Members. There were, however, a number of common themes that have particularly informed the recommendations. These themes are listed below in no particular order.

- The human resources function of the House should be substantially enhanced.
- The House must send a clear message that it takes the issue of sexual harassment seriously, and that complaints of such behavior will be handled with the utmost professionalism.
- The House should draw from other legislatures, other public sector employers and the private sector to ensure best practices.
- The House should conduct an anonymous climate survey in order to obtain a better understanding of the nature of and extent to which sexual harassment exists in the House.
- It is imperative that victims of sexual harassment can easily access clear and consistent information regarding their rights and reporting options.
- The processes by which individuals may bring complaints of sexual harassment and by which those complaints are investigated should be as independent and insulated from the traditional House power structure as possible; and employees should always be advised of their external reporting options (e.g., the Massachusetts Commission Against Discrimination).
- The process for reporting sexual harassment should recognize the power disparities that exist in the House and offer multiple avenues by which to report.
- Complainants should be afforded the fullest confidentiality available when reporting sexual harassment.

- Processes must also afford the accused due process, including a thorough investigation and appropriate, proportional responses.
- The House should mandate sexual harassment training for all Members and staff.
- Members have a wide variety of professional backgrounds prior to beginning House service. Training on what it means to be a supervisor, in the context of the House, would be helpful.
- The House would benefit greatly from the increased professionalization of its workforce through measures such as pre-hiring background checks, standardized job descriptions, performance evaluations, and trainings.
- Any changes to the current structures and processes should include increased clarity and a focus on building trust in the people responsible for receiving and handling complaints.
- Building trust for staff also means providing some information on what happens after a complaint is made and a matter is resolved. No one should feel like they complained and “nothing happened.”
- It is important to recognize that the House does not operate within a vacuum in the State House. Ways to coordinate with the Senate, Constitutional Officers, and other third parties should be explored; and the public nature of the building and its occupants must be considered.
- The House must address not only its formal structures and procedures, but also its culture. Moreover, any changes to current structures and processes should be flexible enough to accommodate the continuously changing nature of cultural norms.
- The House must recognize that this is not a problem to be addressed only in the short term. Processes must be in place to foster a continued review of the way in which the House receives and responds to complaints of sexual harassment and any other discriminatory or otherwise inappropriate behavior.

Employee Listening Sessions

Seven staff listening sessions were conducted as part of this review, which gave staff a forum to provide constructive input on human resources policies, procedures and structures relating in any way to sexual harassment. While representatives from House Counsel’s office introduced the sessions, they were conducted completely by outside counsel. It was our goal to provide staff with anonymity and to encourage an open dialogue, and there are no records of attendance or information on who shared what thoughts.

While attendance was voluntary, the sessions were well attended. While we will again not attempt to reproduce the input received from staff in its entirety, common themes are listed below in no particular order.

- There is an imbedded power dynamic within the House, which discourages staff from reporting incidents of harassment due to the fear of retaliation and of jeopardizing one's career.
- The House should conduct an anonymous climate survey to obtain a better understanding of the nature of and extent to which sexual harassment exists in the House.
- The House needs meaningful and mandatory training for all employees and Members, with separate trainings for supervisors. Trauma-trained counselors should be available at these trainings.
- Staff needs easier access to clear and consistent information, such as key contact information, workplace policies and reporting and investigation procedures.
- There are specific barriers to reporting harassment to the Office of Human Resources, including concerns about confidentiality of the information disclosed, the isolated physical location of the office in the sub-basement, and the open internal layout of the office.
- The processes by which individuals may bring complaints of sexual harassment and by which those complaints are investigated should be as independent and insulated from the traditional House power structure as possible.
- Staff has extensive concerns about a lack of confidentiality. A clear explanation of when and how confidentiality will be maintained is critical.
- In certain circumstances, an outside party should be available to investigate and make recommendations regarding complaints of harassment to ensure an investigation is designed to remedy harassment without regard to the identity of the accused.
- The House should have mechanisms for employees to make formal, as well as informal, reports or complaints of sexual harassment.
- Encouraging bystander intervention and third-party reporting are important mechanisms to increase reporting of incidents of sexual harassment.
- Victims of harassment need particular support when reporting these incidents.

We also understand that some staff expressed concern for those they consider particularly vulnerable in the House; specifically, legislative aides and interns. Additionally, we were told that many staff expressed a desire for increased professional development generally, and for forums in which they can come together for dialogue on matters of interest. We commend this

degree of reflection and consideration from staff. We believe it further highlights the importance for the House to demonstrate renewed commitment to its employees, as well as the range of opportunities available by which to do so.

Individual Member and Employee Meetings

Over the course of our review, we invited any Member or employee of the House who preferred to meet privately to do so. We would like to specifically thank those Members and employees who accepted that invitation. Their willingness to share personal experiences and engage individually in thought-provoking discussions is particularly appreciated.

External Meetings

In order to further inform the recommendations, we solicited input from a number of stakeholders and experts outside of the House.³⁰ The goal was to gain a variety of perspectives on both the overarching issue of sexual harassment and best practices for an organizational response. Specifically, we met with representatives from the following organizations: the Massachusetts Commission Against Discrimination; Associated Industries of Massachusetts; Jane Doe, Inc.; the Massachusetts Attorney General's Office; the University of Massachusetts Lowell Center for Women and Work; the Massachusetts Office for Victim Assistance; the Victim Rights Law Center; and the Boston Area Rape Crisis Center.

These meetings were extremely informative, and each organization's willingness to share constructive feedback is sincerely appreciated. A number of common topics were discussed during these meetings and some particularly helpful recommendations were provided. These topics and recommendations are listed below in no particular order.

- The House must commit to ensuring that people who have experienced sexual harassment are heard.
- The House should conduct an anonymous climate survey in order to obtain a better understanding of the nature of and extent to which sexual harassment exists in the House.
- The House should designate a specific person or office whose duties center around handling complaints of sexual harassment or other discriminatory or otherwise inappropriate behavior, which should be independent of existing House structures to the fullest extent possible. That person or office should be professional, highly specialized, highly visible and capable of eliciting trust and confidence from both Members and staff.

³⁰ We also participated in Massachusetts Continuing Legal Education, Inc.'s seminar, "*1st Look*" at the *Changing Landscape of Sexual Harassment in the Workplace*.

- However, Members and employees should also have multiple options for reporting harassment; and all persons authorized to receive a complaint should be specifically trained on how to do so.
- It is imperative that employees have access to clear and consistent information regarding their rights, and the complaint and investigation process; even if an employee does not ultimately wish to go through a complaint process. This information should always include external third parties to whom reports can be made.
- If the House makes positive changes to its policies and reporting and investigation processes, it should expect to see an increased number of reports of sexual harassment in the short term.
- While trainings are not a panacea for sexual harassment, they are very important. Trainings should be tailored to the recipients (e.g., Members, new employees, supervisors), be conducted in person, occur regularly, and include helpful examples and role-playing scenarios as well as bystander intervention.
- Early intervention for inappropriate behavior that may not rise to the level of sexual harassment is a best practice to prevent sexual harassment.
- The phrase “zero tolerance policy” can inhibit reporting, where it belies the range of options for employer interventions, including remedial and disciplinary actions.
- The House’s sexual harassment policy should be written with the layperson in mind, should be well publicized and easily accessible, and should be supplemented with materials such as “one-pagers” and reporting flowcharts.
- The House must strive to balance two competing concepts: allowing victims to have maximum control over when and how to report sexual harassment, while minimizing the responsibility placed on that victim to advance a complaint or investigation himself or herself.
- At a macro-level, the House human resources function should include certain checks and balances to ensure no one person or office (e.g., the Director of Human Resources, the Committee on Personnel and Administration) has unfettered authority over Members or employees.
- It is important for Members and employees to be able to come together informally to discuss various aspects of their working environments. Such opportunities foster open communication and trust.
- To change the culture, the House must adopt a higher standard for behavior than a standard for limiting legal liability. The House must be proactive and make sure employees understand that the institution cares about them and their experiences.

- The negative repercussions of sexual harassment in the workplace go far beyond the impact on the victim and the harasser. This behavior impacts morale and productivity for bystanders, whole offices, and ultimately the entire institution.

We recognize that certain ideas listed above may seem to be in tension with one another. We nonetheless include them, because the Order requires that we complete a *comprehensive* review. We feel it is our responsibility to consider all such information and attempt to strike the right balance in our recommendations.

4. Review of Legislative Best Practices

Our review also included a survey of best practices as recommended by the National Conference of State Legislatures, and as gathered from existing practices and pending reforms in state legislatures across the country. Best practices and meaningful reforms from other states have been incorporated as appropriate into our recommendations. Key provisions include: (i) expanding the protected classes to include employees of transgender and non-binary gender perspective, (ii) mandated training for all employees, including training on bystander intervention, (iii) alternative avenues and contacts for reporting harassment, (iv) mandatory reporting for supervisors, (iv) a process for reporting improper conduct by a third party, and (v) provisions relating specifically to social media.

5. House Human Resources Audit

As part of this review we facilitated an external audit of the House human resources function and, particularly, the operations of the Office of Human Resources. The audit was comprehensive in its scope. Human resource audits are a key tool for organizations to identify any gaps in policies or practices that may impact the organization negatively.³¹

The audit involved a detailed review of the House's existing policies, procedures and operations designed to prevent and properly address sexual harassment and retaliation in the workplace. In addition, the review assessed staff education on sexual harassment; available avenues to report concerns regarding discriminatory or unprofessional conduct and whether employees typically use these avenues; existing protocols for receiving and investigating complaints; and an evaluation of the overall operations of the Office of House Human Resources. The operational portion of the review included a review of selected personnel files, forms used by the Office of Human Resources (such as those provided during the onboarding process), the Employee Handbook, the Legislative Intern Handbook, and interviews with the Director of Human Resources and each of the three staff members in the Office of Human Resources.

³¹ See generally Society for Human Resource Management, *Conducting Human Resource Audits* (June 16, 2016) (identifying purpose and scope of HR audits).

D. OVERVIEW OF THE CURRENT HOUSE HUMAN RESOURCES FUNCTION

As it is used throughout this report, the term “human resources function” has a unique meaning as it relates to the House. It does not apply to a single House committee or Member, or office or employee; nor does it apply to a wholly uniform set of policies or procedures. The term refers to what is currently an interconnected, yet diffused, system that has developed over time by virtue of the unique nature of the institution. Therefore, when the term “human resources function” is used in this report, it is intended to apply broadly to all structures, policies and procedures of the House that impact Members or employees of the House in their official capacities. The current human resources function of the House is governed predominantly by the House Rules and the House Employee Handbook.

1. House Rules Generally

As discussed previously, the House has the exclusive authority to settle its own rules and orders of proceeding.³² Moreover, future sessions of the House cannot be bound by the action of any previous House session or vote of the General Court or vote of the people.³³ Each House is therefore “the sole judge of the exigency which may justify and require its exercise” of those powers granted to them by the Constitution.³⁴ Though nothing in the Constitution prescribes the manner in which the House must exercise its rule-making power, the House has historically done so through the adoption of a set of House Rules regulating the proceedings in its own branch.³⁵

2. Specific House Rules

The human resources function of the House is implicated by multiple House Rules, including, but not limited to, House Rule 7C (authorizing the Committee on Rules to recommend improvements to expedite the business and procedures of the House), House Rule 16 (establishing the Committee on Ethics and prescribing its powers), House Rule 16A (establishing the Code of Ethics), House Rule 17A (establishing rules for House committees, including those related to holding executive conferences), and House Rule 17C (establishing the Committee on Personnel and Administration and prescribing its duties). House Rule 16 requires the Committee on Ethics to investigate certain allegations made against Members of the House³⁶, and establishes the process by which those allegations shall be investigated and, if appropriate, disciplinary action may be taken against a Member.

³² See Mass. Const. Pt. 2, c. 1, § 3, art. X; *Paisner*, 390 Mass. at 599-01.

³³ See *Paisner*, 390 Mass at 602-03.

³⁴ *Hiss*, 69 Mass. at 473.

³⁵ *Opinion of the Justices to the Senate*, 375 Mass. at 817.

³⁶ While the existing House Rules allow for complaints alleging that a Member *or* an employee has violated the Code of Ethics it is more likely that a complaint alleging misconduct by an employee would be made to the Office of Human Resources pursuant to the Employee Handbook. Therefore, the complaint process established in Rules 16 and 16A would typically only be used for a complaint against a Member.

Rule 16 requires the Committee on Ethics to “investigate and evaluate ... any matters relative to alleged violations of Rule 16A by a member.”³⁷ Investigations by the committee can be initiated in the following ways: (i) at the direction of the Speaker, (ii) by a sworn written complaint filed and delivered by a Member, officer or employee to the Chair, or (iii) by a vote of the committee members.³⁸

Together, Rules 16 and 17A establish the procedures by which the Committee on Ethics must meet in Executive Conference as well as the due process rights the Committee must afford the subject of the investigation.³⁹ Those rights include: (i) notice of the nature of the alleged violation; (ii) a list of prospective witnesses to be called by the Committee; (iii) an opportunity to appear before the Committee during each Executive Conference at which the alleged violation will be considered or discussed; (iv) 48 hours written notice of each Executive Conference; (v) an opportunity to be represented by counsel or another representative of the individual's choosing at each Executive Conference; (vi) the option to open all Executive Conferences to the public; and (vii) the option to have all Executive Conferences recorded.

If, after completing its investigation, a majority of Members appointed to the Committee finds that an allegation has merit, the Committee is required to file a public report with the House Clerk. Moreover, if a majority of the Committee finds that any Member of the House has violated any provision of Rule 16A, they may recommend a reprimand, censure, removal from a chairmanship or other position of authority, or expulsion from the House. Such recommendation would again be made in a public report filed with the House Clerk.

3. House Employee Handbook

In addition to the Rules outlined above, employees are subject to the policies and procedures set forth in the Employee Handbook. The Employee Handbook includes dozens of personnel policies, including policies on personal conduct and sexual harassment. The Director of Human Resources is responsible for distributing the handbook to employees upon hire.

³⁷ While the Committee on Ethics is required to investigate and evaluate certain complaints alleging violations of House Rule 16A, it remains empowered under House Rules 16A, 17A and common parliamentary law to investigate and evaluate any other matter affecting the honor, dignity, purity and efficiency of the House. *See Mason's Manual of Legislature Procedure* at § 564.4 (2000); *see also Ex Parte D.O. McCarthy*, 29 Cal. 395, 403, 406 (1866) (holding where a “charge affecting the honor, dignity, purity and efficiency” of a legislative body is leveled, the legislative body “under the common parliamentary law, had the power to investigate the charge” because a “legislative assembly, when established, becomes vested with all the powers and privileges which are necessary and incidental to a free and unobstructed exercise of its appropriate functions.”).

³⁸ *Id.*

³⁹ *See* House Rule 17A. Executive conferences may only be held for certain purposes and are not open to the public, except in limited circumstances. *Id.* The purposes relevant to this report include: “(i) to discuss the reputation, character, physical condition or mental health rather than the professional competence of a member, officer or employee; [and] (ii) to consider the discipline or dismissal of, or to hear complaints or charges brought against a member, officer or employee.” *Id.*

4. The Office of Human Resources

The Office of Human Resources is staffed by a Director and three employees whose job titles are Payroll/Benefits Coordinator, Payroll Coordinator/Time and Attendance, and Administrative Assistant. The office oversees the administrative tasks associated with hiring, maintaining, and separating House employees from their employment. They generally interact with Members and employees regarding benefits, timekeeping and various other employment-related matters.

E. IDENTIFIED DEFICIENCIES IN THE CURRENT HOUSE HUMAN RESOURCES FUNCTION

1. Highly Public Complaints and Investigations involving Members

The existing House Rules are structured specifically for investigating violations of the House Code of Ethics (Rule 16A). The Code of Ethics, while broad in its application, mostly focuses on abuses and inappropriate behavior of a financial or political nature (e.g., receiving compensation by exerting improper influence, accepting gifts from those with an interest in a matter before the General Court). The Code of Ethics does not specifically contemplate discriminatory behavior, such as sexual harassment or retaliation.

The House Rules as a whole lack provisions that address the issue of sexual harassment specifically, or that otherwise consider the unique needs of complainants.⁴⁰ In particular, the existing Rules do not offer the appropriate confidentiality protections for a complainant who comes forward with allegations of sexual harassment against a Member.⁴¹ From the outset, requiring an employee to make a sworn complaint to the Committee on Ethics would reveal the identity of the complainant and the details of the complaint to the 11 members of the Committee. Furthermore, while the Committee on Ethics (or any committee) may meet in an Executive Conference to consider the complaint and potential discipline of a Member, the Member may nonetheless request that the Executive Conference be open to the public. Lastly, as outlined above, unless the Committee determines that a complaint has no merit, the committee is required to report publically on any complaint it receives. There is no mechanism by which the Committee can take the specific needs of the victim or the particular circumstances of the complaint into account. Such a rigid procedure, which focuses primarily on the disciplinary process, lacks the flexibility needed to appropriately address individual incidents of sexual harassment, or other discriminatory or otherwise inappropriate behavior. Ultimately, without explicitly establishing adequate privacy protections in the House Rules, victims will not feel empowered to report incidents of sexual harassment.

⁴⁰ Again, although the House Rules are silent as to sexual harassment specifically, the Ethics Committee remains empowered under both House Rules 16A, 17A and common parliamentary law to investigate and evaluate any matter affecting the honor, dignity, purity and efficiency of the House of Representatives. *See* Mason's Manual of Legislature Procedure § 564.4 (2000); *see Ex Parte D.O. McCarthy*, *supra* note 37.

⁴¹ *See* discussion of Ethics Committee proceedings, *supra* note 36.

In addition to its limited confidentiality protections, the current structure limits the House's ability to impose proportionate discipline against Members in many circumstances. Imposing reprimand, censure, removal from position as chair or other position of authority, or expulsion upon a Member of the House, carries with it a solemn constitutional weight and exceptional public scrutiny. These are, however, the only disciplinary measures explicitly available to the Committee on Ethics. We believe that the lack of any other remedial measures by which the House may take steps to correct a Member's behavior severely limits the House's ability to impose proportionate discipline while simultaneously discouraging the filing of complaints.

To illustrate, the Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace provides a helpful example:

*Accountability requires that discipline for harassment be proportionate to the offensiveness of the conduct. For example, sexual assault or a demand for sexual favors in return for a promotion should presumably result in termination of an employee; the continued use of derogatory gender-based language after an initial warning might result in a suspension; and the first instance of telling a sexist joke may warrant a warning.*⁴²

There is currently no mechanism by which the House can effectively “warn” a Member of his or her conduct, let alone track and respond to an alleged failure to adhere to the warning. We believe this represents a missed opportunity whereby employment and personnel practices that have been shown to address harassment in a more traditional employment setting are not being utilized.⁴³

We in no way seek to imply that the House should not be empowered to reprimand, censure, remove from position as chair or other position of authority, or expel a Member for sexual harassment. Such measures may be the proper response in a particular circumstance. However, we believe it is critical that the House have a full range of options available to address sexual harassment and “behavior which may not be legally-actionable ‘harassment’ but which, left unchecked, may lead to same.”⁴⁴

2. Unclear Authority of the Office of Human Resources

The origin of the Office of Human Resources dates back to Speaker Thomas W. McGee's appointment of a personnel director during his tenure (1975 – 1984). The precise authority of

⁴² See Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace* 40 [hereinafter *EEOC Report*] (2016) available at https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

⁴³ See *Id.* at 67 (“Employers should ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the severity of the infraction. In addition, employers should ensure that where harassment is found to have occurred, discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.”)

⁴⁴ See *Id.* at 38.

the office, however, remains unclear. It appears that the office was created out of necessity, as a way of centralizing benefits and payroll procedures. However, since its creation, the duties and powers of the office have not been enumerated in either statute or in the House Rules.⁴⁵ Instead, the authority of the office has been shaped by past practice and informal precedent and is limited to those powers it has been granted, and those duties it has been assigned, by various sessions of the General Court.

3. Outdated House Employee Handbook

The Employee Handbook, which does not apply to Members, has not been updated since the 2013-2014 Session and includes a minimally compliant but outdated sexual harassment policy. (See Existing Policies and Procedures below for more detail).

The existing House Rules do not require the Committee on Personnel and Administration to publish an Employee Handbook let alone update it regularly. Furthermore, the House Rules do not establish any mechanism by which the Committee consults with or otherwise utilizes the Office of Human Resources when preparing the handbook. This lack of required and structured collaboration is a missed opportunity for the House to develop and implement best practices.

4. Structural Limitations on House Human Resources

As a whole, the external audit determined that the Office of Human Resources lacks the requisite capacity and background in equal employment opportunity and investigations and certain fundamentals of personnel practices, to sustain the increasingly complex human resources function required by an organization as large and unique as the House.

The Director is accessible, well-liked, respected by his staff, shows a strong commitment to the well-being of employees and has good visibility and employee outreach skills. Unfortunately, the needs of the organization, particularly as they relate to equal opportunity and personnel practices, have greatly expanded since both the creation of the Office and the appointment of the current Director. Moreover, the expanded responsibilities explained further in the following recommendations will require additional, highly specialized staff.

5. Insufficient Policies and Procedures

The audit uncovered certain deficiencies in the existing human resources policies and procedures of the House as well as a lack of certain necessary policies and procedures. A detailed account of those deficiencies, and those additional policies and procedures needed, follows.

⁴⁵ In comparison, other offices consisting of professional staff derive certain authority directly from statute and/or House Rules. *See* G.L. c. 3 (establishing the offices of House Clerk, House Counsel and Sergeant-at-Arms and providing certain authority to those respective offices); House Rule 87 (directing and authorizing the House Business Manager to make all procurements for goods and services for the House).

Sexual Harassment Policy

The sexual harassment policy, while setting forth the minimum standard as detailed in the model policy of the Massachusetts Commission Against Discrimination (“MCAD”), is insufficient and ineffective in encouraging the reporting of sexual harassment, preventing sexual harassment, and adequately training staff and management in order to heighten awareness regarding sexual harassment. Of note, MCAD’s model policy, on which the House’s policy is based, was drafted more than twenty (20) years ago.⁴⁶ In addition, while the policy is included within the Employee Handbook, many employees are not aware of its existence.

Various Employment Practices

The House lacks standardization with respect to certain categories of employment-related procedures and documents, many categories of which do not (but should) exist. In particular, the Office of Human Resources lacks standardization with respect to pre-hiring practices, employment practices such as progressive discipline, performance reviews, the handling of complaints and investigations, employee termination/departure procedures, and recordkeeping. The inconsistent implementation or non-existence of such practices heightens the risk of liability for the House in the event of claims of harassment or other discriminatory treatment. Without consistent enforcement of such practices, the possibility exists for one employee to assert that they were treated less favorably than another employee because of an unlawful reason.

Pre-Hiring Practices

Job Applications/Descriptions

Not only is there presently no standard application for employment, but the Office of Human Resources also does not have templates for job descriptions, with the exception of Legislative Aides. To the extent that job descriptions are created by Members or Committees for other positions, they are not typically shared with the Office of Human Resources.

Offer Letters

There are no standard offer letters reciting the terms of House employment, including that such employment is at-will. Our review of a sampling of personnel files maintained by the Office of Human Resources reflects letters from Members requesting permission to hire an employee to replace an outgoing employee, without any offer letter directed to the employee being hired.

Background Checks

⁴⁶ See St. 1996, c. 278, s. 1 (requiring MCAD to adopt a model sexual harassment policy for use by employers to comply with G.L. c. 151B, s. 3A).

The House does not perform background checks, whether in the form of a CORI check or otherwise, on new employees to determine whether an employee has a criminal history. Without performing any such background check, the House is unnecessarily exposed to employing individuals who may have engaged in criminal activity that could raise concerns about the likelihood of harassment and other improper conduct, including charges or convictions for sex offenses. The same concern is raised by the absence of a standard policy regarding reference checks.

Employment Practices

Progressive Discipline

The House does not have a mandatory protocol or procedure for progressive discipline. Additionally, the House lacks any standardized forms for indicating a verbal warning, written warning or otherwise. Moreover, the Office of Human Resources and supervisors often do not document incidents, which results in a lack of any record if the problem conduct persists. Thus, there is no ability for the Office of Human Resources to track or follow up on employee discipline issues, either with the supervisor or the employee. In fact, the Office of Human Resources often is not made aware of employee discipline issues until a supervisor seeks to terminate the employee.

Performance Reviews

The House has no system in place to support supervisors with conducting employee performance reviews, leaving the question of how to conduct reviews to the discretion of each supervisor.

Separation Procedures

The Office of Human Resources does not have any standard system to record the manner in which separations are handled, which undermines the objective of ensuring that any terminations are nondiscriminatory and not retaliatory.

The Office of Human Resources also does not conduct exit interviews for departing employees, and it requires minimal departure paperwork beyond a basic checklist, which fails to include a reference to whether the employee was terminated or left voluntarily, or whether they are eligible for rehire. The absence of exit interviews leaves open the possibility that the stated reason for leaving (e.g., leaving for another position, returning to school) is inaccurate. The absence of information could obscure an instance where, for example, an employee was terminated for rebuffing a supervisor, or an employee left rather than endure ongoing harassment.⁴⁷ More

⁴⁷ We have no evidence that any of the approximately 860 staff departures from House employment that have occurred since January 1, 2010 were the result of, or related to, sexual harassment. However, we do not discount the possibility that some employees may have left because they were dissatisfied with their workplace.

generally, an exit interview provides an important opportunity to learn whether harassment or other issues exist in the office.

Recordkeeping

Records of the Office of Human Resources

The Office of Human Resources lacks any centralized recordkeeping regarding incidents of harassment, complaints against employees for harassment, or discipline-related matters. A system of recordkeeping would allow easy access to such documents in the event that another incident occurs requiring quick action, including an expedited review of records relating to a specific employee. There is, for example, no standard protocol or guidance regarding when something is or is not noted in a personnel file as a result of a complaint, investigation, or employee discipline.

Personnel Files

The Office of Human Resources lacks a standard protocol for when documentation is placed in a personnel file as a result of a complaint or investigation. Without any document in a personnel file relating to a complaint, for example, there is no record of such issue if an employee is later involved in another incident. Among the documentation which was not consistently maintained in personnel files was information relating to employee complaints and investigations of misconduct or harassment, as well as separation agreements. Without consistent retention of such documents, there is a risk that evidence of a recurring pattern of misconduct will be lost. In addition, the absence of a record of discipline or warning makes it more difficult to ensure even-handed treatment of similar violations.

While it is recommended that procedures regarding documentation are improved (including ensuring that all discipline resulting from investigations of misconduct is included in personnel files), the files relating to previous investigations reviewed by outside counsel during the external audit demonstrated that, in those instances, appropriate discipline and remedial measures were imposed after investigation. Moreover, the external audit confirmed that since at least January 1, 2010 the House has not executed any agreement to settle an allegation of sexual harassment. The external audit found no indication that the House's limited use of termination and severance or separation agreements were intended to cover up misconduct.

F. RECOMMENDATIONS: STRUCTURAL

1. Expanded Leadership and Staffing

To effectuate the recommendations detailed in this report, the House must substantially enhance its human resources function. That should include the hiring of a new Director of Human Resources, an Equal Employment Opportunity Officer (“EEO Officer”) and a Director of Employee Engagement (discussed in further detail below). These changes are necessary because of the additional skills, training and more extensive human resources background required to effectively manage and oversee the Office of Human Resources and to take the lead in effecting the changes and heightened oversight required to accomplish the goals at hand and meet the expanded needs of the organization. In particular, this change will professionalize and enhance the capacity of the Office of Human Resources and the Equal Employment Opportunity Officer to oversee neutral, transparent practices designed to promote equal opportunity and consistent, standards-based treatment. The overarching goal with this recommendation is to effect a change in the workplace culture, which will mitigate the risk of harassment enabled by the standard-free, non-transparent ability of supervisors to reward and punish employees by granting or withholding workplace benefits, which creates opportunities for abuse, including harassment.

As the House human resources function presently operates, policies and procedures are inconsistently enforced, and at times not enforced at all. This provides supervisors with undue discretion to apply these policies, which can promote favoritism. Without clear policies that are uniformly applied, supervisors have limitless discretion without any accountability. New staffing should include individuals with extensive training, background and management experience in human resources sufficient to implement a variety of reforms (both large and small scale), and with the ability to maintain an independent and professional office accessible to all.

We also recommend that the Director of Human Resources be appointed by the Committee on Rules for a term of two years and be subject to removal during that term only for misfeasance, malfeasance or nonfeasance, as determined by agreement of House Counsel and the EEO Officer, and approved by the Committee on Rules or, alternatively, by a majority roll call vote of the House. This heightened standard for removal will help insulate the Director of Human Resources from traditional House power structures.

2. Formalizing the Office of Human Resources in House Rules

We recommend that the position of Director of Human Resources be created in the House Rules to provide the Director and the Office of Human Resources with specific authority and duties. While the authority and duties of the office have greatly expanded since its creation, they have never been clearly enumerated. It is particularly important that the role of the office be more clearly defined to ensure that it is able to meet the expanding needs of the organization as they relate to personnel practices.

3. New Location for Office of House Human Resources

The current location and the open set up of the Office of Human Resources is an impediment to the appropriate functioning of the office. We therefore recommend the relocation of the Office of Human Resources from the sub-basement to a more centrally located office space. That office space should also be configured to facilitate private meetings.

4. Establishing an Equal Employment Opportunity Officer

We recommend the creation of the new and independent role of Equal Employment Opportunity Officer, who will have separate duties from that of the Director of Human Resources. The EEO Officer should operate with a level of autonomy that reflects the seriousness with which the House takes its responsibility to prevent harassment and retaliation.

The EEO Officer should be specifically tasked with ensuring equal opportunity for all employees, including addressing and preventing sexual harassment in the workplace and ensuring equal opportunities for all employees. The EEO Officer's key responsibilities should include: (i) overseeing the enforcement of the anti-harassment policy and making recommendations for revisions to comport with best practices; (ii) creating a system to log and track information regarding potential violations of the harassment policy and to identify patterns or areas of concern; (iii) developing procedures to address concerns about the confidentiality of investigations; (iv) conducting trainings on harassment in the workplace for Members, employees and interns; (v) receiving and investigating complaints of harassment; (vi) serving as a House resource for information, questions and concerns regarding harassment prevention; (vii) promoting equal opportunity; (viii) conducting audits of human resources functions to ensure best practices and identify equal employment opportunity risks; (ix) maintaining a webpage with important policies and procedures, and an annual report summarizing the activities of the office, such as trainings, audits, climate surveys and investigations; (x) developing initiatives to promote opportunities for the advancement of women and underrepresented staff members in the House; and (xi) recommending protocols and procedures to encourage third parties' compliance with the House anti-harassment policy. Furthermore, the EEO Officer should be available to answer questions and provide informal advice to Members and staff regarding their options for bringing concerns forward. In addition to a State House office configured to allow for private meetings, the EEO Officer should be provided access to office space outside of the State House for private consultations with individuals – particularly complainants or witnesses – who wish to speak outside the confines of the State House.

We also recommend that the EEO Officer be appointed by the Committee on Rules for a term of two years and be subject to removal during that term only for misfeasance, malfeasance or nonfeasance, as determined by agreement of House Counsel and the Director of Human Resources, and approved by the Committee on Rules or, alternatively, by a majority roll call vote of the House. This heightened standard for removal will help insulate the EEO Officer from traditional House power structures, since the EEO Officer will be required to investigate any harassment complaints made against members, officers and employees.

The EEO Officer should not be subject to day-to-day reporting to any Member or committee and should specifically be prohibited from sharing the identity of complainants or persons accused of inappropriate behavior, or other information about investigations outside of the investigatory process with any Member unless the EEO Officer recommends terminating a staff person's employment. In the case of a complaint against a Member, the EEO Officer should similarly be prohibited from sharing any such identifying information outside of the investigatory process unless and until the matter is referred to a Special Committee on Professional Conduct, and a matter would only be referred to such a committee in limited circumstances. Where the EEO Officer makes a recommendation other than termination, he or she should be empowered to implement that discipline unilaterally and coordinate with the Office of Human Resources to ensure proper record keeping.

The EEO Officer should have expertise and broad experience in harassment prevention, conducting investigations, and auditing human resources practices to identify equal employment opportunity risks; and he or she should demonstrate commitment to maintaining best practices through innovation. We further recommend that the EEO Officer receive trauma-informed training to properly identify matters appropriate for referral to law enforcement or external support resources and best practices for providing support for victims.

5. Establishing a Director of Employee Engagement

We also recommend the creation of the new role of Director of Employee Engagement. The Director would be a resource for employees on matters of career development and general workplace policies. Among other things, the Director would engage employees in roundtable discussions on issues of importance or concern, provide broad professional development training, and facilitate targeted training for specific categories of employees (e.g., staff directors, legislative aides).

6. Web Portal

We recommend that the Director of Human Resources, in consultation with the EEO Officer, be responsible for the creation of an internal web portal in order to more effectively provide information to employees regarding anti-harassment and other equal opportunity policies and procedures, trainings, and other important information. The web portal should include, among other things: the anti-harassment policy, the Employee Handbook, key contact information, reporting and investigatory procedures, and external resources.

G. RECOMMENDATIONS: RECEIVING, INVESTIGATING, AND RESOLVING COMPLAINTS

1. Overview

Our review indicated that both Members and employees were unfamiliar with the process and procedures for investigating and resolving complaints of sexual harassment. We were informed that, during listening sessions, many staff expressed concern that the report of any complaint would lead to a full-scale investigation involving multiple Members and employees, regardless of the nature of the complaint. This concern was cited as a specific deterrent to reporting. Outside counsel also relayed concerns, at the staff level, that the House does not have a clear policy allowing a witness to report harassment or a confidant to a potential complainant to report harassment.

Based on the feedback we received, we recommend that the House adopt procedures that allow for a complainant, or an individual who witnesses or is made aware of harassment, to make a complaint in the manner that the complainant or individual is most comfortable. That may be in the form of a formal complaint, typically in writing, wherein the complainant expressly alleges inappropriate behavior by another person. In those cases, the individual unequivocally demonstrates that they are filing a complaint and seeking an investigation of that complaint. Anything short of that may be considered an informal complaint. We recognize that an individual who believes he or she has been the subject of discriminatory treatment – and of sexual harassment in particular – may be uncomfortable proceeding directly to making a formal complaint. It is therefore critical that the House process be flexible enough to handle the variety of ways by which victims or witnesses of harassment may come forward.

We recommend that the House adopt a formal complaint form to use in the appropriate cases. Such form may be completed by either the complainant or by the EEO Officer for the complainant to review and sign.

We also recommend that the House procedures outline all possible steps of an investigation, as described in more detail below. Furthermore, we recommend that the EEO Officer prepare supplementary written materials regarding the investigation of complaints. Those supplementary materials, which would be informed by the EEO Officer's particular expertise in investigating complaints, should be published on the web portal. Specifically, those materials should include examples of a range of interim and remedial measures, to demonstrate the House's ability to take actions commensurate with the severity of various infractions and violations. Finally, in order to identify patterns of behavior or repeated offenses, we recommend that the EEO Officer develop a system for tracking all complaints and the outcomes of investigations.

2. Revising Complaint and Investigation Procedures

We recommend that the House adopt procedures providing a complainant, or an individual who witnesses harassment, with multiple points of contact for reporting; and we specifically recommend that there be easily identified points of contact who are female. Members should be permitted to make a complaint to the EEO Officer, House Counsel or the Director of Human

Resources. Employees should be permitted to make a complaint to any of the employee's supervisors (whether a Member or another employee), the Director of Human Resources, the EEO Officer or House Counsel. We understand that Members and employees may be uncomfortable reporting to certain individuals or offices for a number of reasons. Allowing multiple points for reporting will provide flexibility and, we hope, increase the likelihood that victims or witnesses of sexual harassment can easily identify a trusted person to whom they can report the behavior. Everyone authorized to receive complaints or reports of sexual harassment should be specifically trained on how to do so.

While we recommend designating multiple persons who can receive complaints, we also recommend that the recipient of a complaint be required to report it to the EEO Officer.⁴⁸ Funneling all complaints to the EEO Officer will ensure a thoroughly professional response and uniform handling of complaints and will allow for tracking any complaint patterns.

Upon receipt of a complaint, we recommend that the EEO Officer conduct a plausibility assessment. This assessment may include an interview of the complainant⁴⁹, identification of possible corroborating evidence, interview of any voluntary witnesses, and review of personnel files and the complaint tracking system. After the assessment, we recommend that the EEO Officer determine whether the complaint passes the plausibility threshold, requires formal investigation, or may be resolved without further investigation based on the nature of the complaint and the wishes of the complainant. The term "plausibility assessment," in this context, is intended to mean an extremely limited screening for feasibility and not to mean any determination of credibility.⁵⁰

We recommend that the House adopt procedures for the investigation of all complaints that pass the plausibility threshold and cannot be appropriately resolved without further investigation. Such complaints may include an informal complaint that the complainant wishes to pursue as a formal complaint, or complaints of such a nature that the EEO Officer determines require a formal investigation. If the complaint began as an informal complaint, we recommend that the complainant complete the formal complaint form or that the EEO Officer complete the form for the complainant to review and sign.

While many factors will determine the length and complexity of an investigation, we recommend that the House adopt a standard timeframe in which to conduct and complete investigations, such as 90 days. We recommend that the policy require appropriate updates to the complainant

⁴⁸ Unless the EEO Officer is the subject of the complaint, in which case House procedures should require the recipient to notify House Counsel, who should investigate the complaint, in consultation with the Director of Human Resources.

⁴⁹ In the case of an individual who witnesses harassment, we recommend that the EEO Officer interview the individual making the complaint and the potential victim, if possible.

⁵⁰ For example, if a complaint alleged specifically and exclusively that employee A made an inappropriate comment to employee B at the State House on January 1, but it is immediately demonstrated by clear evidence that employee A was on an extended leave of absence and traveling outside of the country on January 1, the complaint could be screened out during the plausibility assessment.

throughout the investigatory process, and notice if the investigation will exceed the standard timeframe.

Where the EEO Officer determines that a formal investigation is required, we recommend adopting the following as best practices regarding formal investigation procedures:

Interviews

We recommend that the EEO Officer and one additional employee be present at the formal interviews of the complainant, accused and any witnesses. We recommend that both employees be trained in trauma-informed questions and conducting interviews of potential victims of sexual harassment. We recommend that the interviews include an explanation of the procedures, a reminder of applicable limits to confidentiality, the appropriate collection and maintenance of evidence, and a reminder that retaliation of any kind is prohibited. We also recommend that the complainant, accused, and any witnesses be provided with contact information for external resources.

We recommend that the House develop a procedure for maintaining records of the interviews, including a written report, notation of the dates and participants, and a copy of notes.

Summary Report and Resolution

We recommend that the EEO Officer draft an objective report summarizing the facts of the investigation and referencing any interview reports, witness statements, and other evidence. We recommend that the EEO Officer use a preponderance of the evidence standard to determine if House Rules or policies were violated, and what, if any, remedial or disciplinary action(s) may be taken or recommended.

3. Implementing Remedial and Disciplinary Action

In the case where the complaint is against a Member, we recommend that the House adopt a procedure by which the EEO Officer may, in certain circumstances, take remedial actions that do not amount to reprimand, censure, removal from position as a chair or other position of authority, or expulsion. If, at the conclusion of an investigation, the EEO Officer recommends imposing such remedial action on a Member, the EEO Officer should inform the Member directly. If the Member objects to the EEO Officer's recommendation, the Member should be provided with an opportunity have a small committee of Members, a Special Committee on Professional Conduct, review the EEO Officer's recommendations and determine the appropriate action to be taken.⁵¹ The House should adopt a procedure for convening such Special Committees.

⁵¹ Again, the Constitution requires the House to establish this process, or a comparable one, for Members. No one but the Members of the House themselves may judge the qualifications of a Members; and the ability to discipline a member is a form of judging such qualification. *See Dinan*, 223 Mass at 517 (“The power to pass upon the election and qualification of its own members thus is vested exclusively in each branch of the General Court...The grant of power is comprehensive, full and complete.”); *Hiss*, 69 Mass. at 473 (holding that the power to expel a member,

If the EEO Officer believes that reprimand, censure, removal from position as a chair or other position of authority, or expulsion of a Member may be appropriate, then the EEO Officer should be required to refer the matter directly to a Special Committee on Professional Conduct and should provide the Special Committee with the investigation file, including the report, interview notes, and any evidence. The Special Committee should be able to supplement the EEO Officer's investigation if necessary, and recommend a full range of remedial or disciplinary actions that may or may not coincide with the EEO Officer's recommendation. If the Special Committee determines that reprimand, censure, removal from position as a chair or other position of authority, or expulsion of a Member is proportional and appropriate under the circumstances, the Committee should then be required to make that recommendation to the full House for a vote.

We recommend that the EEO Officer follow the same procedures for investigating complaints against staff as the procedures outlined above for investigating complaints against Members. With respect to disciplinary action, however, the EEO Officer's conclusions and recommendations for remedial and disciplinary action for staff should be final except where the EEO Officer recommends termination of a staff person's employment. In those instances, we recommend that the EEO Officer review the proposed termination with House Counsel and require House Counsel's approval. In the event that the EEO Officer and House Counsel do not agree that termination of a staff person's employment is the appropriate action, the matter should be referred to the Office of the Speaker to resolve.

4. Maintaining Confidentiality

The complaint and investigation process outlined above should be kept confidential to the fullest extent possible.⁵² Confidentiality protects all parties involved in the process, and has been consistently highlighted as the *most* important consideration of victims who may be thinking about making a complaint or otherwise reporting sexual harassment. We recommend that the House explicitly establish, in the House Rules, the Employee Handbook, the Supervisor's Handbook and other policies as appropriate, a complaint and investigation process that requires the EEO Officer to adhere to the following confidentiality protections:

- The EEO Officer, in assessing a complaint and conducting an investigation, should be required to keep the complaint confidential and should be prohibited from disclosing the identity of the complainant or the person against whom the complaint is made, or any other details of the complaint to any Member or employee. Provided, that the EEO

which is granted to the House as the sole judge of the qualifications of its own members, "is a necessary and incidental power, to enable the house to perform its high functions, and is necessary to the safety of the State. It is a power of protection. A member may be physically, mentally or morally, wholly unfit[.]").

⁵² See *EEOC Report*, *supra* note 42 at 43 ("Employers should devote sufficient resources so that workplace investigations are prompt, objective, and thorough. Investigations should be kept as confidential as possible, recognizing that complete confidentiality or anonymity will not always be attainable.")

Officer should be authorized share information to the extent necessary to interview witnesses or parties to the investigation or to consult with House Counsel if the EEO Officer determines that such consultation is required in connection with the investigation.

- In the case of a complaint against a staff person, the EEO Officer should be required to maintain confidentiality throughout his or her investigation and to implement all remedial actions and discipline short of termination confidentially; without sharing the identity of the complainant or the person against whom the complaint is made, or any other details of the complaint with any Member or employee. Provided, that the EEO Officer should be authorized to share information to the extent necessary to implement any remedial actions or discipline or to consult with House Counsel if the EEO Officer determines that such consultation is required in connection with the investigation. Additionally, the EEO Officer should be authorized to transmit a record of the resolution of a complaint to the Director of Human Resources so that the record may be maintained in the employee's personnel file.
- In the case of a complaint against a staff person, where the EEO Officer recommends termination, the EEO Officer should be authorized to share information with House Counsel for review. If House Counsel and the EEO Officer disagree as to whether termination is the appropriate discipline, confidentiality should only be expanded to the extent needed to inform the Office of the Speaker, and reach a resolution.
- In the case of a complaint against a Member, the EEO officer should be required to maintain confidentiality throughout his or her investigation by: (a) not disclosing information to any Member or employee who is not a witness or party to the investigation, except to consult with House Counsel if the EEO Officer determines that such consultation is required in connection with the investigation; and (b) recommending all remedial actions or discipline short of reprimand, censure, removal from position as a chair or other position of authority, or expulsion of a Member confidentially.⁵³ If a complaint and investigation is referred to a Special Committee on Professional Conduct, either by request of a Member or recommendation of the EEO Officer, the EEO Officer should share the report with the Office of the Speaker and the Minority Leader. When sharing that report, however, the EEO Officer should be authorized to use pseudonyms, redaction and other methods the EEO Officer considers appropriate to address the needs of a complainant or the circumstances of a complaint.

We also recommend that that the House explicitly establish in the House Rules, Employee Handbook, Supervisor's Handbook and other policies, as appropriate, a complaint and investigation process that includes the following additional confidentiality protections:

⁵³ This process should also allow the EEO Officer to discuss, to the extent appropriate, his or her recommended remedial action(s) with the complainant in order to properly conclude the investigation.

- The establishment of a Special Committee on Professional Conduct should be completely confidential, except that the Speaker and Minority Leader should be required to disclose the names of their respective appointments to the EEO Officer. The EEO Officer should be required to maintain a confidential record of the membership of each Special Committee that is convened. The Special Committee should have direct access to all records of the EEO Officer as are relevant to the investigation.
- All proceedings of a Special Committee on Professional Conduct should be confidential and Members of the Committee should be prohibited from sharing any information about the complaint and investigation for which the Committee was convened with any other Member or employee, including their own appointed staff. Provided, that the Committee may consult with House Counsel if the Committee determines that such consultation is required in connection with the investigation.
- The Committee should be able to implement all actions short of reprimand, censure, removal from position as a chair or other position of authority, or expulsion of a Member confidentially, except that the Special Committee should be required to submit a final report to the EEO Officer and should be able to consult with House Counsel if the Committee determines that such consultation is required in connection with their recommended action. The Committee's recommendation, if any, for reprimand, censure, removal from position as a chair or other position of authority, or expulsion of a Member, should be a public document.
- Authorized recipients of complaints or reports of sexual harassment should be required to keep the complaint confidential, except to share the complaint with the EEO Officer.
- Any Member or employee who breaches confidentiality should be subject to discipline.

5. Additional Considerations

There may be instances where, based on the nature and circumstances of the complaint, the EEO Officer believes that he or she cannot objectively assess or investigate the complaint. We recommend that the EEO Officer work with House Counsel to establish guidelines for appropriate referrals of matters in those instances to House Counsel. The guidelines should make clear that House Counsel may resume responsibility for the assessment and investigation or further refer the complaint to outside counsel for independent review.

6. Complaint and Investigation Flow Charts

We understand that the narrative summary of the proposed complaint and investigation process is lengthy. We have prepared three flow charts in an effort to explain the process more clearly. These charts summarize: (1) the process as a whole; (2) the specific process for complaints

against Members; and (3) the specific process for complaints against staff. Please see Appendices C-E.

H. RECOMMENDATIONS: HOUSE POLICIES & PROCEDURES

1. Requiring Sexual Harassment Trainings

We recommend that the House require all Members, officer, employees and interns to annually attend in-person training on sexual harassment, and other harassment, in the workplace. That training should be coordinated by the EEO Officer. The EEO Officer should also collaborate with the Committee on Personnel and Administration and the Director of Human Resources regarding the training.

Separate trainings should be held for Members, supervisory employees, non-supervisors and interns. Each training session should be introduced by senior House Members or employees with leadership roles, both male and female, to demonstrate House leadership's support. Trainings should also be attended by a trauma-trained counselor. Each Member and each employee should be required to sign a written acknowledgement of the completion of their training and their understanding of rules and avenues for complaints or concerns/questions. The EEO Officer and the Director of Human Resources should coordinate to ensure that copies of these forms are retained. Further, the EEO Officer should conduct an orientation training for all newly sworn-in Members and new employees promptly after the commencement of their employment, which should include training on sexual harassment.

The trainings on sexual harassment should include details, examples and role-playing explanations. Substantive areas that should be included in the trainings include, without limitation: (1) various forms of workplace harassment, including sexual harassment and harassment relating to other protected classes; (2) techniques for bystander intervention; (3) respect in the workplace; and (4) professionalism.⁵⁴ The trainings should include specific examples of behavior that violates and does not violate House Rules and policies; explanations of how the same conduct can be viewed differently by different individuals; and review of acceptable use of electronic communications, including social media and texting. Additional topics for supervisor-specific training include: "situational awareness" and best practices for monitoring the workplace for issues and identifying risk factors.

⁵⁴ See *EEOC Report*, *supra* note 42 at 54 (supporting employers conducting trainings on both "workplace civility" and "bystander intervention" to promote a professional workplace and "as part of a holistic harassment prevention program.") Effective bystander intervention trainings generally review the strategies of creating awareness, a sense of collective responsibility, a sense of empowerment, and how to intervene in the moment to interrupt harassment, be an ally to victims and express disapproval of inappropriate conduct. *Id.* at 57-58.

We recommend that the EEO Officer review and assess the feasibility and utility of offering or coordinating voluntary sexual harassment trainings for third parties who are not employees of the House, but who regularly work in the building.

Requiring Additional Trainings

In addition to the recommendations regarding sexual harassment-specific training detailed above, the House should establish and bolster training programs more broadly. Specifically, all newly sworn in Members and newly hired staff should be required to participate in a general orientation within a short period of time after they commence service in the House. The House should similarly create a unique training curriculum for supervisory staff, to include effective management techniques on handling and managing a variety of employment scenarios. Finally, we recommend that the House strengthen professional development options for all categories of staff, whether professional staff, legislative aides, staff directors or others. We specifically recommend that the Committee on Personnel and Administration, the Director of Human Resources, and the Director of Employee Engagement work together to develop and implement these additional trainings.

2. Revising the Anti-Harassment Policy

We believe that a revision of the current sexual harassment policy is necessary in order to increase its efficacy and incorporate best practices, including provisions that add measures of further protection to encourage and increase the reporting of incidents of harassment, and provide employees with additional protection against retaliation.

A proposed revised anti-harassment policy is included at Appendix F. The revised policy includes the following new provisions aimed at creating a more robust and effective policy: (1) training requirements for staff, as outlined above; (2) anti-harassment provisions specifically relating to social media; (3) protections and obligations for employees working outside of the State House; (4) protections against harassment relating to gender identity, non-binary perspective, and transgender status; (5) multiple points of contact for reporting of incidents of sexual harassment, including both women and men; (6) mandated reporting for supervisors when aware of sexual harassment, where the failure to report can result in discipline, including but not limited to termination, particularly where a supervisor has engaged in a pattern of overlooking harassment or retaliation; (7) ensuring the availability of anonymous counseling for employees who are impacted by sexual harassment, either as a victim, witness, or otherwise; and (8) interim measures to protect a complainant after reporting sexual harassment.

Additional Protections

In addition to adopting a revised sexual harassment policy, we recommend the following practices for the heightened enforcement of the policy: (a) mandating an annual review of the policy, both its contents and the infrastructure for handling complaints; (b) requiring distribution of the policy on an annual basis and requiring a signed acknowledgement of receipt and

understanding of the policy; (c) distributing an Intern Handbook, including the anti-harassment policy, to interns upon the commencement of their internship and requiring their signed acknowledgement of receipt and of the consequences of non-compliance; and (d) including the anti-harassment policy as a pop up once each quarter on each employee's computer, requiring a click through and acceptance of the policy before signing on.

3. Revising and Supplementing Handbooks

We recommend that the Director of Human Resources annually publish an Employee Handbook, a Supervisor Handbook and an Intern Handbook. In developing each handbook, the Director should seek the advice and approval of the EEO Officer and House Counsel. The Director should also be specifically required to have each handbook reviewed and approved by the Committee on Personnel and Administration. Handbooks should be accessible to all Members, officers and employees, including through the desktop of each House computer.

We understand that it may take a period of time for the Committee and the Director to publish the fully revised handbooks contemplated by this recommendation. However, we believe it is critical that the House adopt a revised anti-harassment policy as soon as possible. As an interim measure, we recommend that the Committee on Personnel and Administration, in consultation with House Counsel, adopt and publish a revised anti-harassment policy as an addendum to the existing Employee Handbook.

4. Enhancing Human Resources Functions

The impetus for our review has been the specific issue of sexual harassment. As such, the majority of our recommendations are tailored to combat that particular workplace conduct. However, to effectuate the more targeted recommendations, the House must also implement broader human resources reforms. We believe the recommendations listed below, which focus more on establishing consistent employment practices throughout the House, will help the House create a workplace culture that not only mitigates the risk of harassment but also enhances the collective professionalism of the institution.

Standardizing Pre-Employment Practices

We recommend the House standardize pre-employment practices and procedures, as detailed below.

Standard Application for Employment

All prospective employees should be required to submit a standard application for employment.

Background Checks

The House should implement a policy requiring the Director of Human Resources to perform background checks on all prospective employees prior to the commencement of their employment, and every two years that such employee remains employed by the House. Any employee who is arrested, charged or convicted of certain offenses should be required to promptly report the arrest, charge or conviction to the Director of Human Resources. In connection with this new policy, the House should create and implement, in a uniform manner, a written CORI Policy, which should be provided to each applicant. Applicants should be required to sign an acknowledgement form providing permission for the House to run a background check prior to the commencement of their employment. Background check results should be reported by the Director of Human Resources to the job applicant's prospective appointing authority.

Reference Checks

The House should also require reference checks for each applicant prior to extending a job offer to an applicant. Reference checks should be conducted by the Director of Human Resources, and the results should be reported to the job applicant's prospective appointing authority.

Pre-Hiring Notifications

A prospective appointing authority shall notify the Director of Human Resources prior to extending any offer of employment to an applicant.

Offer Letters

The Director of Human Resources should develop standardized offer letters for each category of employee (e.g., legislative aide, staff director).

Standardizing Employment Practices

We recommend the House standardize certain employment practices and procedures, as detailed below.

Job Descriptions and Salary Ranges

The Director of Human Resources, with the assistance of the EEO Officer, should work with Members and employees to draft and implement standard job descriptions for positions throughout the House. In addition, the Director, with the EEO Officer's assistance, should evaluate salaries and create salary ranges for each position, based on qualifications, level of experience and length of tenure at the House. The Director should also be specifically required to have draft job descriptions and salary ranges reviewed and approved by the Committee on Personnel and Administration.

Initial & Regular Meetings with all Supervisory Employees

As the House works to restructure and improve its policies, procedures and mechanisms in place to ensure a safe working environment free of sexual harassment, the Director of Human Resources should develop procedures requiring the Director, the EEO Officer and the Director of Employee Engagement to hold initial and regular, ongoing meetings with all employees who are supervisors. Meetings should allow for discussion of various issues relating to the enforcement of employment practices generally, and the implementation of the improved policies, procedures and structures aimed at addressing issues of sexual harassment more specifically.

Facilitating Employee Performance Reviews

The Director of Human Resources should establish guidelines to facilitate employee performance reviews that supervisors may utilize if they elect to perform such reviews. The procedures shall include a description of the benefits of regular employee performance reviews and a template and checklist for conducting thorough reviews.

Legislative Aides

Legislative Aides should be subject to the same leave policies and benefits as all other House employees, and the same requirements for accounting for their time. Uniform leave policies and time documentation help prevent favoritism, inequity, and inconsistent treatment for different categories of employment. We recognize fully that the position of a legislative aide is a historically unique role within the House; and it is imperative that aides be able to operate with a degree of flexibility that allows them to properly serve the Members who appoint them. Members of the House are called upon to act in their official capacities at all times of day, and on all days of the week, and Members often need legislative aides' assistance at such odd hours. It is not our intention to eliminate this flexibility. We nonetheless recommend standardized practices across House employment categories as a best practice to lessen the risk for sexual harassment and other discriminatory behavior that unfettered discretion can present.

District Offices Oversight

The House does not maintain any documentation or information regarding whether a Member maintains a district office, the location of such office, and which employees work, either full time or part time, in such office. Without any oversight or knowledge of the existence and location of such offices and the employees who staff them, a heightened risk for sexual harassment is created.⁵⁵ Among other things, these employees are less likely to report an incident of sexual harassment if they are not working within the State House on a regular basis.

⁵⁵ See *EEOC Report*, *supra* note 42 at Appendix C, Chart of Risk Factors and Responses (identifying “decentralized workplaces” as a risk factor, where “[m]anagers may feel (or may actually be) unaccountable for their behavior and may act outside the bounds of workplace rules.”). The EEOC Report proposes “[e]nsur[ing] that compliance training reaches all levels of the organization, regardless of how geographically dispersed workplaces may be,” and

The Director of Human Resources should maintain a list of all district offices, with their locations and contact information, and the employees who regularly or occasionally staff them. The Director of Human Resources, in consultation with the EEO Officer, should also develop appropriate procedures for oversight of district offices.

Program of Progressive Discipline

The House should standardize progressive discipline for staff across all offices. The Director of Human Resources should create forms to note verbal warnings and for written warnings. In addition, the Director of Human Resources should create a policy or standard practice regarding which levels of discipline will consistently be placed in personnel files, and which will not. The policy should require that copies of all progressive discipline imposed be circulated to the Director of Human Resources and the EEO Officer.

Separation Procedures

The House should standardize termination procedures, to be implemented by the Director of Human Resources, and create a standard system to record the manner in which separations are handled. For example, categories of separation (e.g., voluntary quit, separation coterminous with end of Member's term, performance, resignation in lieu of termination) should be defined. Within each such category, we recommend that the Director of Human Resources follow a standard, consistent practice regarding whether such employees are eligible for severance, and whether an agreement and release of claims is required.

In addition, to avoid the possibility that the stated reason for leaving is inaccurate, exit interviews should be conducted for terminated employees.

Exit interviews should include questions about office dynamics, favoritism, professionalism, and any conduct that might make employees uncomfortable. A standard form should be developed for exit interviews to be conducted by Human Resources or the EEO officer.

Recordkeeping and Personnel Files

The Director of Human Resources should: (i) develop and maintain a centralized recordkeeping system, (ii) implement consistent practices regarding the documentation that is placed into personnel files, and (ii) ensure that the resolution of a harassment complaint against an employee, including any resulting discipline, as transmitted by the EEO Officer, is placed in the employee's file.

“[d]evelop[ing] systems for employees in geographically diverse locations to connect and communicate” as a strategy for reducing the risk factor. *Id.*

5. Expanding Policies to Interns

Every year, a substantial number of interns work at the House. While the House has a number of interns at any given time, the highest number of interns is present during the summer months. Interns are under the direction of the Committee or individual Member who has arranged their internship. The Committee on Personnel and Administration also oversees the summer intern program, and provides informational programming, including arranging speakers and events.

The value of interns to the House is undeniable. Generally speaking, interns may be asked to perform legislative research, attend committee hearings, assist constituents, and draft correspondence or legislation. While they are certainly valuable and welcome contributors to the House, as unpaid volunteers, interns are not protected by Massachusetts anti-discrimination laws.⁵⁶ Nevertheless, we recommend that the House make explicitly clear that its anti-harassment policy, and all its attendant training requirements, protections and considerations, applies to interns.

Comprehensive Review of the House Intern Program

We additionally recommend that the Committee on Personnel and Administration undertake a comprehensive review of the House Intern Program in order to provide enhanced oversight of interns and ensure that they are provided with protections against harassment. Such oversight should include, without limitation:

- A formal orientation with both the Director of Human Resources and the EEO Officer. This orientation should include, without limitation, the required sexual harassment training.
- The Director of Human Resources should work with the Committee on Personnel and Administration to maintain files for each intern.
- A revision of the Intern Handbook to include the revised House sexual harassment policy. The Intern Handbook should be further revised to include policies on personal conduct, drugs and alcohol, and electronic communications. The Intern Handbook should be published by the Director of Human Resources annually, and distributed to all interns on the first day of their internship. The Director should specifically be required to have the Intern Handbook reviewed approved by the Committee on Personnel and Administration. Interns, like employees, should be required to sign an acknowledgement of receipt form, which will be placed in each intern's personnel file.

⁵⁶ See *Lowery v. Klemm*, 446 Mass. 572, 573 (2006) (holding volunteer at municipal agency could not bring a claim for sexual harassment under G.L. c. 214, s. 1C because she was not an employee for purposes of G.L. c. 151B, s. 4).

- A formalized, uniform process for intern departures at the conclusion of the internship, to be established and implemented by the Director of Human Resources, in conjunction with the Committee on Personnel and Administration. This process should include documentation for all interns to submit regarding their experience working at the House, sufficient to permit interns to raise any issues of concern pertaining to sexual harassment or unprofessional conduct. In addition, the EEO Officer should conduct a random sampling of exit interviews of interns each year.

6. Addressing Third Party Issues

There are a number of third parties who, although not Members or employees of the House, frequent House Offices (and the State House generally) in the course of their work or advocacy. Third parties could therefore be involved in an incident of sexual harassment without the knowledge of the House, and without the ability for the House to protect a victim, or to encourage consequences for such harassment.

We therefore recommend a two-pronged approach.

Reports of Third Parties Engaging in Harassment

First, if an employee or Member raises an issue or complaint of harassment involving a third party the EEO Officer should bring the incident to the attention of the third party's employer or the appropriate regulatory authority. In addition, we recommend that the EEO Officer post a memorandum to third parties who interact with Members and employees of the House, which includes a copy of the House's policy on sexual harassment and the House's code of conduct. If, as recommended above in the discussion of trainings, the House proceeds to offer voluntary sexual harassment training for third parties, the EEO Officer or the Director of Human Resources should further coordinate with the appropriate third parties to conduct that training.

Reports of Harassment Experienced by Third Parties

We also recommend that the EEO Officer be authorized to receive complaints from third parties who interact with the House in the course of their work or advocacy. The EEO Officer should develop specific written policies and procedures regarding such complaints. All policies and procedures should be readily available to third parties for their information and review.

In addition, as stated above, we recommend that the EEO Officer review and assess the feasibility and utility of offering or coordinating voluntary sexual harassment trainings for third parties.

I. ADDITIONAL RECOMMENDATIONS

1. Conducting a Multi-Year Climate Survey

We recommend that the House commission a professional climate survey focused on sexual harassment.⁵⁷ We recommend that the survey gather reliable data in the following three areas: (a) The extent to which employees have encountered conduct which violates the policy prohibiting sexual harassment; (b) the degree of knowledge by employees regarding the existing policy prohibiting harassment, and the avenues available to raise concerns or file complaints; and (c) identification of any obstacles (real or perceived) to employees coming forward with information about sexual harassment. The climate survey should: ensure the confidentiality of responses; provide for the establishment of benchmark levels against which to measure future progress; embody scientifically valid methodology, including authentication of responses to ensure that only intended recipients complete the survey; and include measures to boost survey participation. We further recommend that climate survey be completed on a biennial basis, at least three times.

A draft order effectuating the commission and implementation of a climate survey is included at Appendix G.

It is anticipated that, if the recommendations in this report are implemented, the climate survey in subsequent years will reflect an uptick in reporting. We believe such an uptick would be appropriate and in fact demonstrate an increased trust and confidence amongst employees and Members.

2. Amending House Rules for Implementation

We recommend that the House amend its Rules to implement those recommendations contained in this report that are required to, or should be, implemented by Rule. Draft House Rules are attached at Appendix H.

3. Amending Joint Rules to Address Joint Employees

We recommend that the House collaborate with the Senate to amend the Joint Rules as needed to properly address joint employees of both chambers and clarify those policies and practices applying to such joint employees.

⁵⁷ See *EEOC Report supra* note 42 at 37 (recommending climate surveys “to assess the extent to which harassment is a problem in their organization.”).

4. Continuing House Review & Commitment

The process and recommendations proposed in this report are not intended to be limiting, but rather are part of a fluid process subject to further review and change over time if the implemented new mechanisms are determined not to be effective in working towards achieving the goals identified in this report. After new measures and recommendations are implemented, The Director of Human Resources, House Counsel and, if established, the EEO Officer will continue to monitor the efficacy of these reforms to evaluate whether progress towards these goals is being attained. To the extent that it is determined that new measures are ineffective towards these goals, we will revisit alternative structures, ideas and suggestions raised during the review.

In order to fully commit and work to effectuate the changes envisioned by the recommendations herein, regular and collaborative meetings should be held between the Committee on Personnel and Administration, the Director of Human Resources, House Counsel and, if established, the EEO Officer.

J. IMPLEMENTATION PLAN AND DEADLINES

We recommend that the House establish the following deadlines for implementing key portions of these recommendations:

Recommended Initiative	Recommended Deadline
Adopting Revised Anti-Harassment Policy	May 1, 2018
Hiring Director of Human Resources	August 1, 2018
Hiring Equal Employment Opportunity Officer	August 1, 2018
Hiring Director of Employee Engagement	August 1, 2018
Implementing Uniform Leave Policies and Benefits for Legislative Aides	July 1, 2018
Implementing Updated Human Resources Functions	December 31, 2018

K. APPENDICES

Appendix A. House, No. 3983 of 2018

Appendix B. Statement of Speaker DeLeo to the House of Representatives, October 27, 2017

Appendix C. Complaint and Investigation Process Full Flowchart

Appendix D. Member Complaint and Investigation Process Flowchart

Appendix E. Staff Complaint and Investigation Process Flowchart

Appendix F. Proposed Anti-Harassment Policy

Appendix G. Proposed House Order for Climate Survey

Appendix H. Proposed House Rules

APPENDIX A

HOUSE No. 3983

Filed by Mr. DeLeo of Winthrop. October 27, 2017.

The Commonwealth of Massachusetts



**In the One Hundred and Ninetieth General Court
(2017-2018)**

1 *Ordered*, That Counsel to the House of Representatives, appointed pursuant to section 51
2 of chapter 3 of the General Laws and hereinafter referred to as Counsel, shall undertake a
3 comprehensive review of all structures, policies, procedures and operations of the human
4 resources function for the House including those that relate to ensuring a workplace free of
5 sexual harassment and retaliation; and be it further

6 *Ordered*, That said review shall include an analysis of existing policies and practices designed to
7 prevent and properly address sexual harassment and retaliation in the workplace; and be it further

8 *Ordered*, That said review shall include an evaluation of existing training materials and
9 presentations for members, officers and employees including those that: (i) identify available
10 avenues to report concerns regarding sexual harassment, retaliation or other unprofessional
11 conduct, and (ii) explain protocols for receiving and investigating specific complaints; and be it
12 further

13 Ordered, That Counsel shall recommend enhancements to existing structures, policies and
14 procedures to increase awareness of the available avenues for reporting concerns or complaints
15 and to ensure thorough investigations and appropriate discipline where investigations identify
16 violations of House Rules or policies; and be it further

17 Ordered, That Counsel shall recommend enhancements to existing structures, policies and
18 procedures to promote: (i) professional and consistent treatment of complaints of sexual
19 harassment or retaliation, (ii) recordkeeping practices that ensure investigators have access to
20 any records of prior complaints, and (iii) the imposition of appropriate remedial and disciplinary
21 measures that meet the House's commitment to a workplace free of sexual harassment and
22 retaliation at all levels; and be it further

23 Ordered, That Counsel shall recommend enhancements to existing structures, policies and
24 procedures to ensure that the House's commitment to a workplace free of sexual harassment and
25 retaliation is fully reflected through the structures, policies and procedures of the House; and be
26 it further

27 Ordered, That Counsel shall recommend enhancements to existing structures, policies and
28 procedures to instill a culture of accountability focused on ensuring a professional and safe
29 working environment for all members, officers, employees and guests of the House; and be it
30 further

31 Ordered, That Counsel, notwithstanding House Rule 87 and utilizing sound business practices,
32 shall have the exclusive authority and discretion to retain outside legal and consulting experts, as
33 Counsel may deem appropriate; and be it further

34 Ordered, That Counsel may utilize legal assistants appointed pursuant to section 54 of chapter 3
35 of the General Laws; and be it further

36 Ordered, That Counsel shall act independently of any member, officer or employee of the House
37 in conducting the review required by this order and all members, officers, employees and
38 contractors of the House shall comply with any request from Counsel related to the review
39 authorized herein; and be it further

40 Ordered, That Counsel shall file a report with recommendations for updates to the structures,
41 policies, procedures and operations of the human resources function for the House with the Clerk
42 of the House no later than March 1, 2018; and be it further

43 Ordered, That upon receipt of the report from Counsel with recommendations for updates to the
44 structures, policies, procedures and operations of the human resources function for the House,
45 the Clerk of the House shall make said report available electronically to all members, officers
46 and employees of the House and shall post the report on the General Court's website.

APPENDIX B

The Commonwealth of Massachusetts

JOURNAL OF THE HOUSE.



FRIDAY, OCTOBER 27, 2017.

[113]

JOURNAL OF THE HOUSE.

Friday, October 27, 2017.

Met according to adjournment at eleven o'clock A.M., in an Informal Session, with Mr. Donato of Medford in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

At the request of the Chair (Mr. Donato), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Pledge of
allegiance.

Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Resolutions (filed by Representatives Poirier of North Attleborough, Barrows of Mansfield and Kafka of Stoughton) congratulating Thomas James Underwood on receiving the Eagle Scout Award of the Boy Scouts of America;

Thomas
Underwood.

Resolutions (filed by Mr. Linsky of Natick) congratulating Trevor Landurand on receiving the Eagle Award of the Boy Scouts of America; and

Trevor
Landurand.

Resolutions (filed by Ms. Peisch of Wellesley) honoring Aidan Matthew Sullivan on receiving the Eagle Award of the Boy Scouts of America;

Aidan
Sullivan.

Mr. Galvin of Canton, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Mr. Nangle of Lowell, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Communications.

Communications

From the Commissioner of the Department of Energy Resources announcing that (under the provisions of Section 134 of Chapter 47 of the Acts of 2017) she had appointed Will Lauwers, Director of Emerging Technologies of said department as her designee to serve on the special legislative commission established to study the feasibility, administration, and economic impact of a battery testing facility, located in one of the four western counties of the Commonwealth;

Western
counties,—
battery testing
facility
commission.

From the Department of Elementary and Secondary Education (see Section 11 of Chapter 69 of the General Laws) on English language Acquisition professional development;

English
language
acquisition.

From the Department of Elementary and Secondary Education (see Section 432 of Chapter 159 of the Acts of 2000) submitting the annual report on Students with Disabilities 2015-2016 [copies forwarded to the House committee on Ways and Means and the joint committee on Education, as required by said law]; and

Students with
disabilities.

From the Massachusetts Office for Victim Assistance (see Section 47 of Chapter 260 of the Acts of 2014) submitting its recommendation report on shelter

Shelter and
housing
options.

and housing options for domestic and sexual violence victims;
Severally were placed on file.

Papers from the Senate.

The House Bill making appropriations for the fiscal year 2017 to provide for final deficiencies and for certain other activities and projects (House, No. 3979) (its title having been changed by the Senate committee on Bills in the Third Reading), came from the Senate passed to be engrossed, in concurrence, with an amendment striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2194.

Supplemental appropriations.

Appropriations,—
final
deficiencies.

Under suspension of Rule 35, on motion of Mr. Sánchez of Boston, the amendment was considered forthwith. The House then non-concurred with the Senate in its amendment; and, on further motion of the same member, asked for a committee of conference on the disagreeing votes of the two branches. Representatives Sánchez, Kulik of Worthington and Smola of Warren were appointed the committee on the part of the House. Sent to the Senate to be joined.

Conference committee.

Subsequently notice was received from the Senate that said branch had insisted on its amendment, concurred with the House in the appointment of a committee of conference; and that Senators Spilka, DiDomenico and deMacedo had been appointed the committee on the part of the Senate.

Id.

Bills

Establishing a sick leave bank for Erik Nordahl, an employee of the Massachusetts Rehabilitation Commission (House, No. 3943), came from the Senate passed to be engrossed, in concurrence, with an amendment in line 4 inserting after the word “Nordahl”, the first time it appears, the words “to care for his spouse”; and

Erik Nordahl,—
sick leave.

Establishing a sick leave bank for Laura Sypien, an employee of the Department of Mental Health (House, No. 3949), came from the Senate passed to be engrossed, in concurrence, with an amendment in line 5 inserting after the word “Sypien”, the first time it appears, the words “to care for her spouse”;

Laura Sypien,—
sick leave.

The amendments severally were referred, under Rule 35, to the committee on Bills in the Third Reading.

A Bill to diversify the use of the Workforce Training Fund to support the Workforce Competitiveness Trust Fund (Senate, No. 2192, amended by adding the following section:

Workforce training,—
funds.

“SECTION 1A. Subsection (a) of section 2WWW of said Chapter 29, as so appearing, is hereby amended by adding the following sentence:— These grants shall be known as the Senator Kenneth J. Donnelly Workforce Success grants.”) (on Senate bill No. 2109), passed to be engrossed by the Senate, was read; and it was referred, under Rule 33, to the committee on Ways and Means.

Bills

Establishing a sick leave bank for Donna Paul, an employee of the Department of Correction (Senate, No. 2166) (on a petition); and

Donna Paul,—
sick leave.

Designating a certain bridge in the town of Auburn and a portion of state highway in the town of Leicester in memory of Officer Ronald Tarentino, Jr. (Senate, No. 2193) (on Senate bill No. 1967);

Officer Ronald Tarentino,—
highway.

UNCORRECTED PROOF.

Severally passed to be engrossed by the Senate, were read; and they were referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Reports of Committees.

By Mr. Chan of Quincy, for the committee on Consumer Protection and Professional Licensure, on a joint petition, a Bill relative to chapter 7 of the acts of 2009 (House, No. 3950) [Local Approval Received].

Beverly,—
liquor
license.

By the same member, for the same committee, on House, No. 3892, a Bill authorizing the city of Medford to issue certain licenses to the Chevalier Theatre for the sale of food and alcoholic beverages (House, No. 3981) [Local Approval Received].

Medford,—
liquor
licenses.

By the same member, for the same committee, on House, No. 3763, a Bill authorizing the town of Danvers to grant up to ten additional licenses for the sale of alcoholic beverages (House, No. 3982) [Local Approval Received].

Danvers,—
liquor
licenses.

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Murphy of Weymouth, for said committee, then reported that the matters be scheduled for consideration by the House.

Under suspension of the rules, in each instance, on motion of Mr. Nangle of Lowell, the bills severally were read a second time forthwith; and they were ordered to a third reading.

Emergency Measure.

The engrossed Bill designating a certain bridge in the city of Fall River as the Leonard “Lenny” Kaplan Memorial Bridge (see Senate, No. 2098, amended) having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

Fall River,—
Kaplan
bridge.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 4 to 0. Sent to the Senate for concurrence.

Subsequently, the Senate having concurred in adoption of the emergency preamble, the bill (which originated in the Senate) was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Bill
enacted.

Recess.

At fourteen minutes after eleven o’clock A.M., on motion of Mr. Wong of Saugus (Mr. Donato of Medford being in the Chair), the House recessed subject to the call of the Chair; and at twelve minutes before three o’clock P.M. the House was called to order with Mr. Donato in the Chair.

Recess.

Motion to Suspend Rule 24(2).

Speaker DeLeo of Winthrop moved that Rule 24(2) be suspended so that he might offer, from the floor, an Order relative to authorizing the Counsel to the House of Representatives to conduct a study and make recommendations to the House providing for enhancements to existing structures, policies and procedures to

House of
Representatives,—
sexual
harassment
policy.

ensure that the House's commitment to a workplace free of sexual harassment and retaliation is fully reflected through the structures, policies and procedures of the House (House, No. 3983), which was read as follows:

Ordered, That Counsel to the House of Representatives, appointed pursuant to section 51 of chapter 3 of the General Laws and hereinafter referred to as Counsel, shall undertake a comprehensive review of all structures, policies, procedures and operations of the human resources function for the House including those that relate to ensuring a workplace free of sexual harassment and retaliation; and be it further

Ordered, That said review shall include an analysis of existing policies and practices designed to prevent and properly address sexual harassment and retaliation in the workplace; and be it further

Ordered, That said review shall include an evaluation of existing training materials and presentations for members, officers and employees including those that: (i) identify available avenues to report concerns regarding sexual harassment, retaliation or other unprofessional conduct, and (ii) explain protocols for receiving and investigating specific complaints; and be it further

Ordered, That Counsel shall recommend enhancements to existing structures, policies and procedures to increase awareness of the available avenues for reporting concerns or complaints and to ensure thorough investigations and appropriate discipline where investigations identify violations of House Rules or policies; and be it further

Ordered, That Counsel shall recommend enhancements to existing structures, policies and procedures to promote: (i) professional and consistent treatment of complaints of sexual harassment or retaliation, (ii) recordkeeping practices that ensure investigators have access to any records of prior complaints, and (iii) the imposition of appropriate remedial and disciplinary measures that meet the House's commitment to a workplace free of sexual harassment and retaliation at all levels; and be it further

Ordered, That Counsel shall recommend enhancements to existing structures, policies and procedures to ensure that the House's commitment to a workplace free of sexual harassment and retaliation is fully reflected through the structures, policies and procedures of the House; and be it further

Ordered, That Counsel shall recommend enhancements to existing structures, policies and procedures to instill a culture of accountability focused on ensuring a professional and safe working environment for all members, officers, employees and guests of the House; and be it further

Ordered, That Counsel, notwithstanding House Rule 87 and utilizing sound business practices, shall have the exclusive authority and discretion to retain outside legal and consulting experts, as Counsel may deem appropriate; and be it further

Ordered, That Counsel may utilize legal assistants appointed pursuant to section 54 of chapter 3 of the General Laws; and be it further

Ordered, That Counsel shall act independently of any member, officer or employee of the House in conducting the review required by this order and all members, officers, employees and contractors of the House shall comply with any request from Counsel related to the review authorized herein; and be it further

Ordered, That Counsel shall file a report with recommendations for updates to the structures, policies, procedures and operations of the human resources function for the House with the Clerk of the House no later than March 1, 2018; and be it further

Ordered, That upon receipt of the report from Counsel with recommendations for updates to the structures, policies, procedures and operations of the human

UNCORRECTED PROOF.

resources function for the House, the Clerk of the House shall make said report available electronically to all members, officers and employees of the House and shall post the report on the General Court's website.

The motion to suspend Rule 24(2) prevailed; and the order (House, No. 3983) was adopted.

Speaker DeLeo of Winthrop then asked unanimous consent to make a statement; and there being no objection, he addressed the House as follows.

I am infuriated and deeply disturbed to hear that a dozen women who are professionally associated with the State House have described being sexually harassed while here. While I understand and support their desire to remain anonymous, the fact that victims fear the consequences to their careers of reporting the harassment is as upsetting as the harassment itself. I want to assure all members, employees and visitors of/to the House of Representatives, that the House of Representatives has a zero tolerance policy for harassment of any form and has, and will continue to, thoroughly investigate any reported incident of harassment and take decisive and appropriate action to discipline offenders and protect victims.

Since I have been Speaker of the House, this institution has endeavored to create a positive work environment for all of our members, employees and visitors. To hear that we may have failed is deeply troubling to me. To know that, as recent headlines suggest, we are not alone provides no comfort. The national focus on this issue is well deserved and should serve to remind us all of the prevalence of harassment, and the need for constant vigilance to ensure that every person is safe and comfortable while at work.

Mr. Rushing of Boston then moved that the statement of the Speaker be spread upon the records of the House; and motion prevailed.

Emergency Measure.

The engrossed Bill establishing a sick leave bank for Jacqueline Staelens, an employee of the Trial Court of the Commonwealth (see House, No. 3886) having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 5 to 0. Sent to the Senate for concurrence.

Order.

On motion of Mr. DeLeo of Winthrop,—

Ordered, That when the House adjourns today, it adjourn to meet on Monday next at eleven o'clock A.M.

Remarks of
Speaker Robert
A. DeLeo of
Winthrop.

Jacqueline
Staelens,—
sick leave.

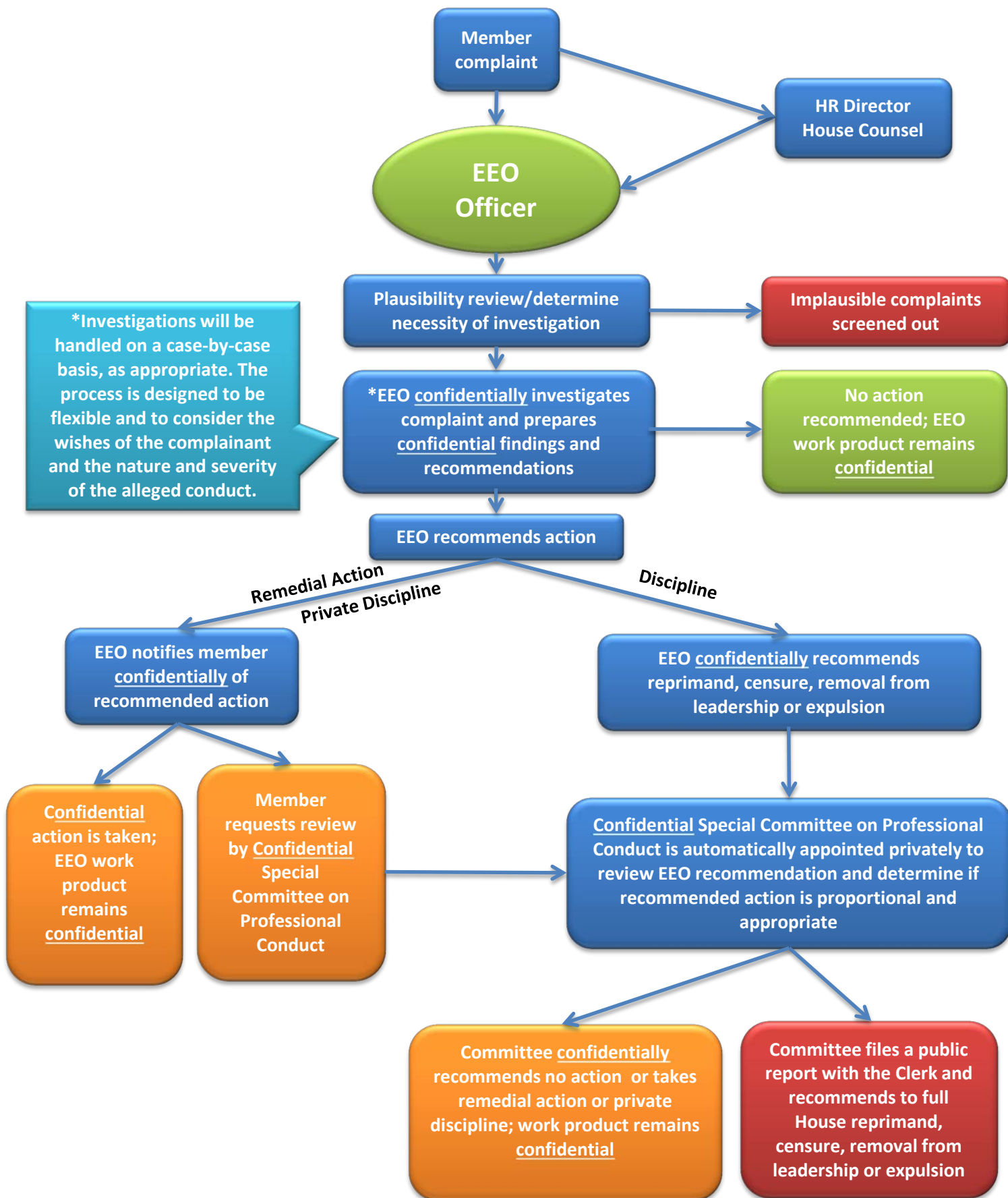
Next
sitting.

At three minutes before three o'clock P.M., on motion of Mr. Wong of Saugus (Mr. Donato of Medford being in the Chair), the House adjourned, to meet the following Monday at eleven o'clock A.M., in an Informal Session.

APPENDIX C

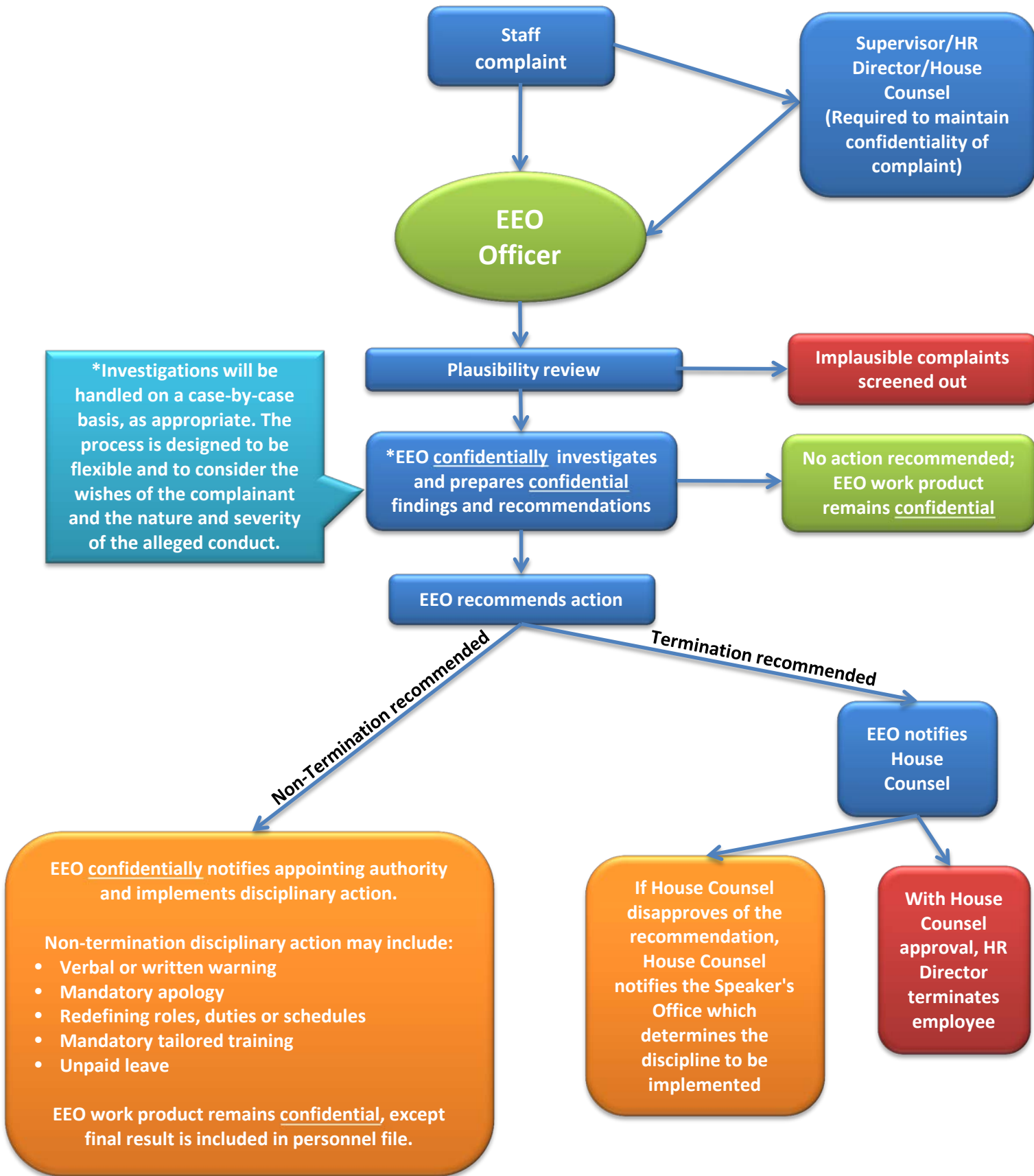
APPENDIX D

Member Complaint and Investigation Process



APPENDIX E

Staff Complaint and Investigation Process



APPENDIX F

ANTI-HARASSMENT POLICY OF THE MASSACHUSETTS HOUSE OF REPRESENTATIVES¹

General Statement of the House

The House of Representatives (“House”) is committed to creating and maintaining a work environment in which all employees are treated with respect and free from any form of harassment, whether discriminatory or sexual in nature. Harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment at the House is unlawful and will not be tolerated, including harassment based on an employee’s race, color, religion, national origin, sex, ancestry, sexual orientation, age, disability status, genetic information, gender identity, active military personnel status, transgender status, or membership in any other protected class .

Further, any retaliation against an individual who has complained about harassment or any retaliation against individuals for participating in an investigation of a harassment complaint is similarly unlawful and will not be tolerated. To achieve the House’s goal of providing a workplace free from harassment, the conduct described in this policy will not be tolerated and a procedure has been provided by which inappropriate conduct will be addressed.

Because the House takes allegations of harassment seriously, we will respond promptly to complaints of harassment. Where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate. Please note that while this policy sets forth the House’s goals of promoting a workplace free of all harassment, the policy is not designed or intended to limit the House’s authority to discipline or take remedial action for workplace conduct which is deemed unacceptable, regardless of whether such conduct satisfies the definition of discriminatory or sexual harassment.

Employees should read and familiarize themselves with this policy. If an employee has any questions, he or she should contact the Equal Employment Opportunity Officer (“EEO Officer”). To report discriminatory or sexual harassment, please contact any of the individuals listed in Section 9.

¹ It is important to note at the outset that the policy contained herein is only a draft and is subject to review and amendment by the Committee on Personnel and Administration. With that said, we believe that this draft policy: (1) appropriately addresses recommendations made in the Report as they specifically relate to the right of House employees to work in an environment free from harassment and retaliation, and (2) reflects the strong commitment of the House to provide its employees with such a working environment.

1. Discriminatory Harassment

In accordance with the House's goal of providing a workplace free from harassment, we have described below the types of conduct which may rise to the level of discriminatory conduct depending on the circumstances.

Definition of Discriminatory Harassment

Discriminatory harassment is verbal or physical conduct that demeans, stereotypes, or shows hostility or aversion toward an individual or group because of the individual's race, color, religion, national origin, sex, ancestry, sexual orientation, age, disability status, genetic information, gender identity, active military personnel status, transgender status, or membership in any other protected class. Such conduct:

- Has the purpose or effect of creating an intimidating, hostile, humiliating, or offensive working environment;
- Has the purpose or effect of unreasonably interfering with an individual's work performance; or
- Otherwise adversely affects an individual's employment opportunities.

Examples of conduct that may constitute discriminatory harassment include, but are not limited to, the following:

- (a) Epithets, slurs, insults or negative stereotyping related to the protected classes;
- (b) Acts or jokes that are hostile or demeaning with regard to the protected classes;
- (c) Threatening, intimidating or hostile acts that relate to the protected classes;
- (d) Displays of written or graphic material that demean, ridicule or show hostility toward an individual or group because of membership in a protected class, including material circulated or displayed in the workplace, including district offices, such as on an employee's desk or workspace, or on House equipment or bulletin boards, including, but not limited to, House-issued computers, laptops or other electronic devices;
- (e) Verbal or non-verbal innuendo, and micro-aggressions; and
- (f) Other conduct that falls within the definition of discriminatory harassment set forth above.

The House will not tolerate any form of prohibited harassment by employees.

2. Sexual Harassment

Definition of Sexual Harassment

In Massachusetts, sexual harassment means sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

- (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or
- (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits or continued employment constitute sexual harassment.

The legal definition of sexual harassment is broad and, in addition to the above examples, other sexually oriented conduct, whether it is intended or not, whether engaged in by a supervisor, a co-worker or co-workers, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating or humiliating to male or female workers or employees who do not identify as gender binary, may also constitute sexual harassment. Sexual harassment may involve individuals of the same or different genders, or those who do not identify as gender binary.

Examples of Sexual Harassment

Examples of sexual harassment include, but are not limited to:

- gender-based bullying, including bullying based on transgender or non-gender binary status;
- attempts to coerce an unwilling person into a sexual relationship;
- repeatedly subjecting a person to unwelcome sexual or romantic attention;
- punishing a person's refusal to comply with a request for sexual conduct; and
- conditioning a benefit on submitting to sexual advances.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- unwelcome sexual advances, flirtations or propositions, whether they involve physical touching or not;
- sexual “kidding,” epithets, jokes, written or oral references to sexual conduct;
- gossip regarding one’s sex life;
- comment on a person’s body or an individual’s sexual activity, deficiencies or prowess;
- displaying sexually suggestive objects, pictures, posters or cartoons;
- unwelcome leering or staring at a person;
- sexual gestures and suggestive or insulting sounds, such as whistling, or comments with sexual content or meaning;
- uninvited physical contact, such as touching, hugging, purposely brushing against the body, patting or pinching;
- indecent exposure;
- inquiries into one’s sexual experiences;
- discussion of one’s sexual activities;
- sexual emails; and
- sexting, or sexual messages or images posted on social media, for example, texts, instant messages, Facebook posts, Tweets, Snapchat, Instagram, blog entries.

Retaliation

All employees should take special note that, as stated above, retaliation against an individual who has complained about discriminatory or sexual harassment, and retaliation against individuals for participating in an investigation of a discriminatory or sexual harassment complaint is unlawful and will not be tolerated by the House.

3. Employee Mandatory Training

All employees are required to participate in trainings relating to general harassment and sexual harassment in the workplace on an annual basis. Separate trainings shall be held for employees with supervisory authority. All employees shall be provided with a written acknowledgement of the completion of training and their understanding of rules and avenues for complaints or concerns/questions, which will be signed by each employee and retained by Human Resources. A list of employees who failed to participate in the mandatory training program shall be provided to Human Resources, and such employees may be subject to discipline.

Examples of substantive areas included in the annual training are: (1) various forms of workplace harassment, including sexual harassment and harassment relating to other protected classes; (2) the complaint and investigation process; (3) techniques for bystander intervention; (4) respect in the workplace; and (5) professionalism. The training will include specific examples of behavior that violates and does not violate the policy; explanations of how the same conduct can be viewed differently by different employees; and review of acceptable use of electronic

communications, including social media and texting. Additional topics for supervisor training may include: “situational awareness” and best practices for monitoring the workplace for issues and identifying risk factors.

In addition to the annual training referenced above, all new employees are required to participate in an orientation training, which includes training on harassment, with the EEO Officer promptly after the commencement of their employment. All new employees must satisfy this requirement within 30 days of employment.

4. Non-Employee Conduct

During the course of their employment, employees may interact both inside and outside of the House with non-employees including those who regularly work in the State House. The House encourages employees to report *all* conduct that they believe may constitute discriminatory or sexual harassment, whether or not such conduct is directed at them, including conduct of non-employees. While the House’s authority to impose sanctions on a non-employee is limited, upon receipt of a complaint of discriminatory or sexual harassment by a non-employee, the House will follow the same process described herein with respect to employees to the extent practicable. Upon a determination that discriminatory or sexual harassment by a non-employee has occurred, the House will take all action reasonably necessary and practicable to prevent the recurrence of discriminatory or sexual harassment by such non-employee.

5. Social Media/Electronic Communications

Social media exists in many forms, including web blogs, Internet forums, personal websites, Twitter, Facebook, LinkedIn, podcasts, video-sharing and picture-sharing forums, and other interactive sites. The House understands and appreciates that many employees use various social media platforms as a means of communication. However, employees are ultimately responsible for what they post online.

Employees must engage in social media and electronic communications (including email, texts, and desktop wallpaper) in a manner that is consistent with the House’s policies and procedures, including this harassment policy. Therefore, social media conduct and improper electronic communications that rise to the level of harassment or other unprofessional or improper conduct is prohibited at all times, and any employee who engages in such conduct will be subject to the investigation procedure described herein. An employee who is the subject of harassment through social media or electronic communications should report such harassment to any of the individuals referenced in Section 9.

6. Employees Working Off Site

All of the protections and provisions set forth in this policy apply regardless of whether an employee is working: (i) at the State House, (ii) in a district office, (iii) in the field, or (iv) at a meeting, district meeting, or conference either within or outside of the State House, or otherwise within the scope of his or her employment.

7. Interns

All of the protections and provisions set forth in this policy apply to House interns.

8. Conduct Between or Among Those with Supervisory Authority and Staff Members

Sexual harassment may involve inappropriate and unprofessional personal attention by a supervisor or individual with managerial authority (or other person in a position to exercise workplace power) toward an employee over whom he or she has authority. Sexual harassment can also occur between employees holding the same or similar positions. An example would be persistent inappropriate or unprofessional personal attention from one colleague to another in the face of repeated rejection of such attention. Both types of harassment are unacceptable.

9. Complaints of Discriminatory or Sexual Harassment

An employee who believes that he or she has been the object of discriminatory or sexual harassment, or an employee who witnesses discriminatory or sexual harassment or becomes aware of such harassment, is encouraged to file a complaint, either orally or in writing. Employees are strongly encouraged to immediately report such conduct. The longer the period of time between the incident and the initiation of a complaint, the more difficult it is to accurately reconstruct what occurred.

The complainant does not need to be the person to whom the harassing conduct is directed. The complainant may be a witness who was offended or otherwise affected by the conduct. The individual alleged to have engaged in misconduct may be anyone including a Member, a supervisory employee, a co-worker or a non-employee.

Such complaint should be reported to any of the employee's supervisors or any of the individuals identified below, and such person shall immediately refer the matter to the EEO Officer for assessment. Any of these individuals are also available to discuss any concerns that you may have and to provide information about the House's anti-harassment policy and its complaint process.

- Keith Johnson, Director, Office of Human Resources, State House, Room 7
keith.johnson@mahouse.gov, 617-722-2814
- James Kennedy, Chief Counsel, State House, Room 139
james.kennedy@mahouse.gov, 617-722-2360

- Jennifer Mathews, Deputy Chief Counsel, State House, Room 139
jennifer.mathews@mahouse.gov, 617-722-2360
- Equal Opportunity Employment Officer, [add contact information]

Employees are encouraged to share information with any of these individuals, as well as the Member or any employee who supervises the employee, regarding incidents of harassment, even when the misconduct is not directed at them, and regardless of whether the employee chooses to file a formal complaint.

10. Supervisors' Mandatory Obligation to Report Incidents of Harassment

Supervisors are required to promptly report any knowledge or awareness of an instance of discriminatory or sexual harassment to the EEO Officer. A supervisor who witnesses or otherwise has direct or indirect knowledge regarding an occurrence of harassment and fails to report such knowledge may be subject to disciplinary action, up to and including termination, particularly if the supervisor has engaged in a pattern of overlooking harassment or retaliation.

Such reports must be made regardless of whether a police report has been filed, or if the individual identified as the target victim requests that no action be taken.

11. Investigation

When the House receives a complaint alleging discriminatory or sexual harassment, it will be provided to the House's EEO Officer (if the complaint is not reported in the first instance to the EEO Officer). The EEO Officer will promptly assess the complaint for plausibility and, unless the complaint is implausible on its face², will investigate the allegation in a fair and expeditious manner consistent with the House Rules and supplemental practices, procedures and guidelines established by the EEO Officer pursuant to the House Rules. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. All parties, including the complainant and the individual alleged to have engaged in wrongdoing, shall be: (i) provided with an explanation of the investigatory procedures; (ii) advised of the importance of confidentiality; (iii) reminded of applicable limits of confidentiality; (iv) reminded of the prohibition on retaliation; (v) advised that certain investigations may be referred to House Counsel or outside counsel, due to the nature and circumstances of the complaint; and (vi) provided with contact information for external resources.

² An assessment for plausibility is an extremely limited screening for the feasibility of a complaint, and is not a determination of credibility. For example, if a complaint alleged specifically and exclusively that employee A made an inappropriate comment to employee B in person at the State House on January 1, but it is immediately demonstrated by clear evidence that employee A was on an extended leave of absence and traveling outside of the country on January 1, the complaint could be screened out during the plausibility assessment.

The investigation will ordinarily include private interviews with the person filing the complaint and with witnesses. The person alleged to have engaged in harassment will also ordinarily be interviewed. When the investigation is completed, the House will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

During the investigation, interim measures may be taken to protect a complainant after a complaint is made, such as a temporary transfer or suspension of the individual alleged to have engaged in such harassment in appropriate circumstances, at least until the investigation is complete.

Employees who are impacted by discriminatory or sexual harassment, either as a victim, witness or otherwise, shall be provided with information by which to access to anonymous counseling resources.

12. Disciplinary Action

At the conclusion of the investigation, if it is determined that a House employee has committed inappropriate conduct resulting in a violation of this policy, the House will take such disciplinary, remedial and/or preventative action as is appropriate under the circumstances. Disciplinary action may range from counseling to termination of employment; and may include other actions, such as a direction to cease the offensive behavior, mandatory participation in training or coaching, a required apology, written warning, suspension with or without pay, probation, reassignment, demotion, and/or withholding of a promotion or withholding of a pay increase.

In instances where the EEO Officer recommends a termination of employment, the House Counsel's approval will be required. In the event that the EEO Officer and House Counsel do not agree that termination of a staff member's employment is the appropriate action, the matter will be referred to the Office of the Speaker to resolve.

The individual making the complaint will ordinarily be informed of the outcome of the investigation.

If an investigation does not support a finding that this policy has been violated, the individual making the complaint and the individual against whom the allegation was made shall be so advised. Both will be reminded that retaliation for making the complaint is prohibited.

13. State and Federal Remedies

In addition to the above, if an employee believes that he or she has been subjected to discriminatory or sexual harassment, the employee may file a formal complaint with either the U.S. Equal Employment Opportunity Commission ("EEOC") or the Massachusetts Commission

Against Discrimination (“MCAD”) or both government agencies. Using our internal complaint process does not prohibit employees from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim: EEOC – 300 days; MCAD – 300 days.

The U.S. Equal Employment Opportunity Commission

John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
1-800-669-4000

The Massachusetts Commission Against Discrimination

Boston Office:
One Ashburton Place, Suite 601
Boston, MA 02108
(617) 994-6000

Springfield Office:
436 Dwight Street, Room 220
Springfield, MA 01103
(413) 739-2145

New Bedford Office:
128 Union Street, Suite 206
New Bedford, MA 02740
(774) 510-5801

Worcester Office:
484 Main Street, Room 320
Worcester, MA 01608
(508) 453-9630

14. Policy Summary

This policy reflects the strong commitment of the House to provide its employees with an environment free from harassment, and from retaliation for exercising rights under this policy. The House is committed to investigating complaints of harassment and retaliation promptly and thoroughly regardless of who brings them or against whom they are brought.

QUESTIONS?

The House EEO Officer is available to answer any questions about this policy. The EEO Officer can be reached at _____ or _____.

Additional information is also available on the following web portal maintained by the HR Director: _____

APPENDIX G

The Commonwealth of Massachusetts



House of Representatives, [DATE].

**In the One Hundred and Eighty-Ninth General Court
(2017-2018)**

On Motion of XXXX of XXXX,--

Ordered, That Counsel to the House of Representatives, appointed pursuant to section 51 of chapter 3 of the General Laws and hereinafter referred to as Counsel, shall contract with an outside third-party vendor to conduct a series of no less than 3 comprehensive surveys of appointed officers and employees of the House to gather information on the nature and prevalence of sexual harassment or otherwise inappropriate conduct in the workplace, to estimate the degree of knowledge persons have regarding the House policy prohibiting harassment, to identify the options for, and barriers to, reporting such conduct, to identify any need for changes to human resources policies or procedures, to identify educational opportunities, and to provide a baseline against which to evaluate the efficacy of any changes to human resources policies or procedures;

Ordered, That Counsel shall ensure that the survey provides respondents with complete anonymity and that any results of the survey which may include individually identifying characteristics or other information related to any appointed officer or employee participating in the survey shall remain confidential and in the exclusive possession of the outside third-party vendor;

¹ It is important to note at the outset that the proposed House Order contained herein is only a draft and is subject to review and amendment during the appropriate process. With that said, we believe that this proposal appropriately authorizes and implements the Report's recommendation that the House conduct a multi-year climate survey.

Ordered, That Counsel, notwithstanding House Rule 87 and utilizing sound business practices, shall have the exclusive authority and discretion to retain the third-party vendor and any other legal or consulting experts, as Counsel may deem appropriate to contract for and implement the conduct of the surveys by the third-party vendor;

Ordered, That Counsel may utilize legal assistants appointed pursuant to section 54 of chapter 3 of the General Laws;

Ordered, That Counsel shall act independently of any member, officer or employee of the House in contracting for and implementing the surveys required by this order and all appointed officers, employees and contractors of the House shall comply with any request from Counsel related to this order; and be it further

Ordered, That Counsel shall ensure the initial survey is concluded by the third-party vendor no later than January 1, 2019 and shall ensure additional surveys are concluded by the third-party vendor no later than January 1, 2021 and January 1, 2023.

APPENDIX H

Professional Standards and Conduct¹

88. (a) Definitions. As used in Rules 88 to 99, inclusive, the following terms shall, unless the context clearly requires otherwise, have the following meanings:-

“Authorized party”, a party authorized to receive a complaint of harassment or retaliation pursuant to Rule 93.

“Counsel”, Legal Counsel to the House appointed pursuant to section 51 of chapter 3 of the General Laws.

“Director”, the Director of Human Resources appointed pursuant to Rule 90.

“Discriminatory harassment”, verbal or physical conduct that:

(1) demeans, stereotypes, or shows hostility or aversion toward an individual or group because of the individual’s race, color, religion, national origin, sex, ancestry, sexual orientation, age, disability status, genetic information, gender identity, active military personnel status, transgender status or membership in any other protected class and;

(2) (i) has the purpose or effect of creating an intimidating, hostile, humiliating or offensive working environment;

(ii) has the purpose or effect of unreasonably interfering with a member, officer, intern or employee’s work performance or official duties; or

(iii) otherwise adversely affects a member, officer, intern or employee’s employment opportunities or ability to fulfill his or her official duties or conduct business before the House.

“EEO Officer”, the Equal Employment Opportunity Officer appointed pursuant to Rule 89.

“Harassment”, discriminatory harassment or sexual harassment engaged in by a member, officer, intern or employee of the House or by a third party.

“Sexual harassment”, sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

(1) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions, or as a term, condition or basis for the support of certain policy objectives, political aspirations or business before the House; or

¹ It is important to note at the outset that the proposal for changes to the House Rules contained herein is only a draft and is subject to review and amendment during the appropriate committee and floor process. With that said, we believe that this proposal: (1) appropriately addresses recommendations made in the Report as they specifically relate to the right of Members, officers, interns and employees of the House, and third parties, to a working environment free from harassment and retaliation; and (2) reflects the strong commitment of the House to provide Members, officers, interns and employees of the House, and third parties, with such a working environment.

(2) such advances, requests or conduct have the purpose or effect of unreasonably interfering with a member, officer, intern or employee's work performance or official duties by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under this definition, direct or implied requests for sexual favors in exchange for actual or promised (i) employment benefits such as favorable reviews, salary increases, promotions, increased benefits or continued employment or (ii) support for certain policy objectives, political aspirations or business before the House, shall constitute sexual harassment.

The definition of sexual harassment is broad and may include other sexually oriented conduct, whether or not it is intended to violate this Rule, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating or humiliating to a member, officer, intern or employee of the same or different gender, or those who do not identify as gender binary.

"Supervisor", a member, officer or employee having direct authority or oversight over one or more employees.

"Third parties", any person visiting the House of Representatives, or conducting official business or work with any member, officer or employee of the House.

(b) Policy. The House is committed to providing fair and equal opportunity for employment and advancement to all employees and applicants.

It is our policy and practice to assign, promote and compensate employees on the basis of qualifications, merit, and competence. Employment practices shall not be influenced nor affected by virtue of an applicant's or employee's race, color, religion, national origin, sex, ancestry, sexual orientation, age, disability status, genetic information, gender identity, active military personnel status, transgender status or membership in any other protected class.

This policy governs all aspects of recruiting, hiring, training, on-the-job treatment, promotion, transfer, discharge and all other terms and conditions of employment.

Without limiting the applicability of the foregoing, the House is committed to creating and maintaining a work environment in which all members, officers, interns and employees of the House, and all third parties, are treated with respect and free from any form of harassment, including harassment based on an individual's membership in any protected class. To that end, the House will not tolerate harassment of any kind by any member, officer, intern employee or third party in the workplace or otherwise in connection with the official duties or employment responsibilities of a member, officer, third party, intern or employee. Any individual who believes that he or she may have been the object of harassment is strongly encouraged to report that information to an authorized party.

The House shall promote the safety and respectful treatment of all members, officers, interns and employees of the House, and all third parties, by establishing uniform procedures for making and receiving complaints of harassment and initiating, conducting and concluding investigations into complaints of harassment.

A violation of this policy will subject the member, officer, employee or intern to discipline pursuant to Rule 95 and Rule 96.

(c) Examples. (1) Discriminatory harassment may include, but is not limited to, the following conduct:

- (i) epithets, slurs, insults or negative stereotyping related to the protected classes;
- (ii) acts or jokes that are hostile or demeaning with regard to the protected classes;
- (iii) threatening, intimidating or hostile acts that relate to the protected classes;
- (iv) displays of written or graphic material that demean, ridicule or show hostility toward an individual or group because of membership in a protected class, including material circulated or displayed in the workplace, including District Offices, such as on an employee's desk or workspace, or on House equipment or bulletin boards, including but not limited to House-issued computers, laptops and personal device assistants;
- (v) verbal or non-verbal innuendo, and micro-aggressions; and
- (vi) other conduct that falls within the definition of discriminatory harassment set forth above.

(2) Sexual harassment includes, but is not limited to, the following conduct:

- (i) gender-based bullying, including bullying based on transgender or non-gender binary status;
- (ii) attempts to coerce an unwilling person into a sexual relationship;
- (iii) repeatedly subjecting a person to unwelcome sexual or romantic attention;
- (iv) punishing a person's refusal to comply with a request for sexual conduct; and
- (v) conditioning a benefit on submitting to sexual advances.

(3) Conduct that, if unwelcome, and depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness, may constitute sexual harassment includes, but is not limited to, the following:

- (i) unwelcome sexual advances, flirtations or propositions, whether they involve physical touching or not;
- (ii) sexual "kidding," epithets, jokes, written or oral references to sexual conduct;
- (iii) gossip regarding one's sex life;
- (iv) comment on a person's body or an individual's sexual activity, deficiencies, or prowess;
- (v) displaying sexually suggestive objects, pictures, posters or cartoons;
- (vi) unwelcome leering or staring at a person;

(vii) sexual gestures and suggestive or insulting sounds, such as whistling or comments with sexual content or meaning;

(viii) uninvited physical contact, such as touching, hugging, purposely brushing against the body, patting or pinching;

(ix) indecent exposure;

(x) inquiries into one's sexual experiences;

(xi) discussion of one's sexual activities;

(xii) sexual emails; and

(xiii) sexting, or sexual messages or images posted on social media, for example, texts, instant messages, Facebook posts, tweets, Snapchat, Instagram or blog entries.

(d) Retaliation. No member, officer or employee of the House shall retaliate, including against a member, officer, intern, or employee of the House who has complained about harassment or participated in an investigation into an allegation of harassment or retaliation. Any person who believes that he or she may have been the subject of retaliation for having complained of harassment or retaliation, or for having participated in an investigation related to an allegation of harassment or retaliation, is strongly encouraged to report that information to an authorized party.

89. Equal Employment Opportunity Officer

(a) The House shall employ a full-time Equal Employment Opportunity Officer. The committee on Rules shall appoint a qualified person with expertise in harassment prevention, conduct of investigations, and identifying barriers to equal employment opportunity to act as the EEO Officer at such compensation as the committee on Rules shall approve.

The EEO Officer shall serve a term of two years from the date of appointment, unless the EEO Officer sooner resigns, retires or is removed; provided, however, that the EEO Officer may only be removed: (i) for misfeasance, malfeasance or nonfeasance, as determined by agreement of Counsel and the Director, and approved by a majority vote of the committee on Rules; or (ii) by a majority roll call vote of the House.

The EEO Officer may employ such assistants as may be necessary in the discharge of the EEO Officer's duties, subject to the approval of the committee on Rules, and may expend with like approval such sums as may be necessary for the discharge of their duties.

(b) The EEO Officer shall receive, review and investigate all complaints alleging a violation of Rule 88, the House Anti-Harassment Policy, or the House Equal Employment Policy, including, but not limited to complaints alleging harassment or retaliation. Complaints shall be received, reviewed and investigated pursuant to Rules 93 to 96, inclusive.

The EEO Officer shall develop and implement written policies and procedures for receiving, investigating resolving and maintaining records of complaints against members, officers, interns or employees of the House, or against third parties, made in accordance with Rules 93 to 98, inclusive.

(c) (1) The EEO Officer, in conjunction with the committee on Personnel and Administration and the Director, shall provide for training of members. Members shall be required to complete training within 30 days of being sworn in and annually thereafter. Training shall be in-person and shall include, without limitation, instruction on: (i) House equal employment policies, including the complaint and investigation process; (ii) workplace harassment specifically, including techniques for bystander intervention and other best practices; (iii) prohibition on retaliation; (iv) best management practices; (v) professionalism and respect; and (vi) practices for monitoring the workplace for issues and identifying risk factors. Each member shall make a signed, written acknowledgement of the member's completion of the training, which shall be retained by the EEO Officer.

(2) The EEO Officer, in conjunction with the committee on Personnel and Administration and the Director, shall provide for training for all appointed officers and employees. Appointed officers and employees shall be required to complete training within 30 days of initial hire or appointment and annually thereafter. Training shall be in person and shall include, without limitation, instruction on (i) House equal employment policies, including the complaint and investigation process; (ii) workplace harassment specifically, including techniques for bystander intervention and other best practices; (iii) prohibition on retaliation; and (iv) professionalism and respect.

Separate trainings shall be held for those appointed officers and employees who are supervisors and those appointed officers and employees who are not supervisors. The content of the training shall be tailored appropriately to the recipients. Supervisors shall be specifically trained on best management practices.

Each appointed officer and employee shall make a signed, written acknowledgement of his or her completion of the training, which shall be retained by the EEO Officer, who shall provide a copy to the Director to be maintained in his or her personnel file.

(3) The EEO Officer shall provide for appropriate additional training to members, officers or employees at any time that the EEO Officer deems necessary or appropriate, including upon the request of a member, officer or employee.

(4) The EEO Officer, in conjunction with the Director, shall provide for training for interns during the intern orientation process. The training shall include without limitation, instruction on: (i) House equal employment policies, including the complaint and investigation process; (ii) workplace harassment specifically, including techniques for bystander intervention and other best practices; (iii) prohibition on retaliation; and (iv) professionalism and respect. Each intern shall make a signed, written acknowledgement of the intern's completion of the training, which shall be retained by the EEO Officer, who shall provide a copy to the Director to be maintained in the Director's records.

(d) The EEO Officer shall develop practices and procedures for auditing House offices, including random audits, to ensure the maintenance of best practices. Audits may include interviews and in-office

observation. All members, officers, interns and employees shall comply with a request from the EEO Officer to conduct an audit.

90. Director of Human Resources

(a) The House shall employ a full-time Director of Human Resources. The committee on Rules shall appoint a qualified person to act as the Director at such compensation as the committee on Rules shall approve.

The Director shall serve a term of two years from the date of appointment, unless the Director sooner resigns, retires or is removed; provided, however, that the Director may only be removed: (i) for misfeasance, malfeasance or nonfeasance, as determined by agreement of the EEO Officer and Counsel and approved by a majority vote of the committee on Rules; or (ii) by a majority roll call vote of the House.

(b) The Director may employ such assistants as may be necessary in the discharge of the Director's duties, subject to the approval of the committee on Rules, and may expend with like approval such sums as may be necessary for the discharge of their duties.

(c) The Director shall develop and oversee standardized practices and procedures, which shall apply to all applications for employment. The practices and procedures shall include, but shall not be limited to: (i) a standard application for employment; (ii) mandatory background and reference checks, the results of which shall be reported by the Director to the applicant's prospective appointing authority; and (iii) a standard offer letter for each position within the House.

(d) The Director shall develop and oversee standardized practices and procedures, which shall apply to all employees and appointed officers of the House. These practices and procedures shall include or address, without limitation: (i) regular meetings between the Director, the EEO Officer and employees who are supervisors, including an initial meeting within 14 days of the employee assuming such a role; (ii) guidelines for conducting employee performance reviews; (iii) a program of progressive discipline; and (iv) separations from employment.

(e) The Director shall develop employee classifications, which shall include written job descriptions, salary ranges and schedules. The classifications shall be published in the employee and supervisor handbooks.

(f) The Director shall develop practices and procedures for receiving, investigating and resolving personnel complaints unrelated to Rule 88, the House Anti-Harassment Policy, or the House Equal Employment Policy.

(g) The Director shall annually publish: (i) an Employee Handbook; (ii) a Supervisor Handbook; and (iii) an Intern Handbook. Each handbook shall be developed with the advice and approval of the EEO Officer and Counsel, and shall be submitted to the committee on Personnel and Administration for review and approval at least 14 days prior to publication.

The handbooks shall be available as follows:

- (i) the Director shall post all three handbooks on the human resources web portal;

- (ii) the Director shall email an electronic copy of the Employee Handbook to each employee within 10 days of its publication and require that each employee sign a written acknowledgement of receipt and return such acknowledgement to the Director within 5 days;
- (iii) the Director shall email an electronic copy of the Employee Handbook to each new employee within 5 days of the employee's start date and require that the employee sign a written acknowledgement of receipt and return such acknowledgement to the Director within 5 days;
- (iv) the Director shall email an electronic copy of the Supervisor Handbook to all supervisors within 10 days of its publication and require that each supervisor sign a written acknowledgement of receipt and return such acknowledgement to the Director within 5 days;
- (v) the Director shall email an electronic copy of the Supervisor Handbook to all new supervisors within 5 days of their assuming such a position or, in the case of a member, within 5 days of being sworn into office, and require that the supervisor sign a written acknowledgement of receipt and return such acknowledgement to the Director within 5 days;
- (vi) the committee on Personnel and Administration shall provide an Intern Handbook to each intern on the first day of his or her internship. Upon receipt of the Intern Handbook the intern shall sign a written acknowledgement of receipt that day, which shall be maintained by the committee, with a copy sent to the Director;
- (vii) hard copies of each handbook shall be available in the offices of the Director, the EEO Officer, Counsel and the Clerk;
- (viii) the Director shall cause electronic copies of each handbook to be downloaded onto the desktop of each House computer; and
- (ix) in formats accessible to all members, officers and employees.

91. Human Resources Web Portal

The Director shall, in consultation with the EEO Officer, create and maintain an internal web portal for members, officers and employees. The web portal shall provide relevant information on human resource policies and procedures, including, without limitation, the Rules of the House, each handbook published by the Director, explanations of complaint and investigation procedures, contact information for the Director, the EEO Officer and Counsel, and training schedules.

92. Director of Employee Engagement

- (a) The House shall employ a full-time Director of Employee Engagement. The committee on Personnel and Administration shall appoint a qualified person to act as the Director of Employee Engagement at such compensation as the committee on Personnel and Administration shall approve.
- (b) The Director of Employee Engagement shall, in consultation with the Director of Human Resources:
 - (i) develop methods for enhancing the skills and professional development of employees; and
 - (ii) engage employees in roundtable discussions on issues of importance or concern.

(c) The Director of Employee Engagement shall assist the committee on Personnel and Administration with duties as may be assigned by the committee or the Director of Human Resources.

93. Complaints

(a) (1) A member who believes that he or she has been the object of harassment or retaliation, who witnesses harassment or retaliation, or who becomes aware of harassment or retaliation may make a complaint, either orally or in writing with the EEO Officer, Counsel, or the Director. Upon receipt of a complaint pursuant to this subsection, a recipient other than the EEO Officer shall forthwith provide a detailed account of the complaint to the EEO Officer for assessment pursuant to Rule 94.

(2) An appointed officer, employee or intern of the House who believes that he or she has been the object of harassment or retaliation, who witnesses harassment or retaliation, or who becomes aware of harassment or retaliation may make a complaint, either orally or in writing to any of the officer's, employee's or intern's supervisors, the Director, the EEO Officer or Counsel. Upon receipt of a complaint pursuant to this subsection, a recipient other than the EEO Officer shall forthwith provide a detailed account of the complaint to the EEO Officer for assessment pursuant to Rule 94.

(3) A third party who believes that he or she has been the object of harassment, or who witnesses harassment or retaliation may make a complaint, either orally or in writing with the EEO Officer. Upon receipt of a complaint pursuant to this subsection, the EEO Officer shall assess the complaint pursuant to Rule 94.

(b) The EEO Officer shall provide guidance for authorized parties who may receive complaints under subsection (a), both in the form of the training referenced in Rule 89 and otherwise. The guidance shall instruct authorized parties on the proper way to receive complaints and to advise complainants on issues including, but not limited to, confidentiality, prohibition on retaliation and the availability of additional resources and avenues for action for the complainant, including possible criminal action where appropriate.

(c) If a complaint, made pursuant to subsection (a), is against the EEO Officer or an employee appointed by the EEO Officer, the recipient of the complaint shall notify Counsel, who shall, in consultation with the Director, investigate the complaint pursuant to Rules 94 to 96, inclusive.

(d) If, based on the nature and circumstances of the complaint, the EEO Officer believes that he or she cannot objectively assess or investigate a complaint made pursuant to subsection (a) the EEO Officer shall refer the matter to Counsel who shall assume responsibility for the assessment or investigation or refer the complaint to outside counsel for investigation. The EEO Officer shall consult with Counsel to establish guidelines used to identify matters that should be referred to Counsel or outside counsel pursuant to this subsection.

94. Investigations

(a)(1) All complaints alleging harassment or retaliation by or against a member, officer, intern or employee of the House, or by or against a third party, received by any member, officer or employee of the House, shall be immediately referred to the EEO Officer for assessment.

(2) Upon receiving a complaint alleging harassment or retaliation by or against a member, officer or employee of the House, or by or against a third party, the EEO Officer shall promptly undertake an assessment to determine whether the complaint is plausible and requires investigation.

Upon a determination by the EEO Officer that a complaint is plausible and requires investigation, the EEO Officer shall commence an investigation of the complaint.

Upon a determination by the EEO Officer that a complaint is not plausible and does not require investigation, the EEO Officer shall submit a report to Counsel and the Director describing the complaint and the EEO Officer's basis for determining that the complaint lacked plausibility and did not require investigation. If either Counsel or the Director objects to the EEO Officer's determination, the EEO Officer shall commence an investigation of the complaint.

(b) The EEO Officer shall assess complaints and conduct investigations pursuant to written policies and procedures, which shall be established by the EEO Officer pursuant to Rule 98 and published on the human resources web portal. The policies and procedures shall ensure that all assessments, investigations and reports are confidential to the fullest extent practicable under the circumstances and shall include, without limitation, the following: trauma-informed techniques; mechanisms for investigating complaints made by witnesses or third parties; standards for collecting and maintaining evidence; consideration of interim measures; and methods to tailor each investigation to the specific needs of the complainant and particular circumstances of the complaint.

(c) The EEO Officer shall complete investigations within 90 days; provided, that the EEO Officer may extend the investigation in extraordinary circumstances. The EEO Officer shall regularly, but no less frequently than every 2 weeks, update the complainant on the status of the investigation.

(d) Upon the conclusion of an investigation, the EEO Officer shall prepare a report summarizing the complaint, the EEO Officer's investigation, findings and recommendations, if any, for disciplinary, remedial, or preventative action, or any combination thereof.

95. Discipline

(a) (1) If after completion of an investigation pursuant to Rule 94, the EEO Officer determines that a member has violated Rule 88, the EEO Officer shall recommend disciplinary, remedial or preventative action, or any combination thereof, as is appropriate and proportional under the circumstances, subject to the limitations set forth in paragraphs (2) and (3).

(2) Where the EEO Officer's action recommended pursuant to paragraph (1) does not include reprimand, censure, removal from position as a chair or other position of authority, or expulsion, prior to imposing such action the EEO Officer shall notify the member of the action and provide the member with a copy of the EEO Officer's report. The member may, within 10 days of receiving notice, request in writing that the Speaker and Minority Leader appoint a special committee pursuant to Rule 96 to review the findings and recommendations of the EEO Officer. Upon receipt of said request, the Speaker and Minority Leader shall convene a special committee pursuant to Rule 96.

If the member fails to request the appointment of a special committee pursuant to Rule 96 within 10 days, the EEO Officer shall implement the recommended action.

(3) If the action recommended pursuant to subsection (a) includes reprimand, censure, removal from position as a chair or other position of authority, or expulsion, the EEO Officer shall request that the Speaker and Minority Leader convene a special committee pursuant to Rule 96 to review the findings and recommendations of the EEO Officer. Upon receipt of said request from the EEO Officer, the Speaker and Minority Leader shall appoint a special committee pursuant to Rule 96.

(4) Upon the request for a special committee made by the EEO Officer or a member pursuant to this subsection, the EEO Officer shall provide the Speaker and Minority Leader with a copy of the EEO Officer's report.

(b) (1) If after completion of an investigation pursuant to Rule 94 the EEO Officer concludes that an appointed officer, intern or employee has violated Rule 88, the EEO Officer shall notify the appointing authority for the appointed officer, intern or employee and recommend and implement remedial, preventative or disciplinary action, or any combination thereof, as is appropriate and proportional under the circumstances, subject to the limitations set forth in paragraph (2). Notwithstanding Rule 97, the appointing authority may inform any other supervisors of the appointed officer, intern or employee of the remedial, preventative or disciplinary action if the appointing authority believes that sharing such information is necessary for maintaining proper supervision of the appointed officer, intern or employee.

(2) If after completion of an investigation pursuant to Rule 94 the EEO Officer concludes that an appointed officer, intern or employee has violated Rule 88 and the EEO Officer's action recommended pursuant to paragraph (1) includes termination of employment or internship, the EEO Officer shall forward the recommendation, with all supporting documentation, to Counsel for review and approval. Counsel shall have two business days to review the EEO Officer's recommendation. If Counsel approves the recommendation, Counsel shall notify the EEO Officer and the Director and the Director shall immediately terminate the individual's employment or internship. If Counsel rejects the EEO Officer's recommendation, he shall notify the EEO Officer and the Speaker and the Speaker shall determine the action to be implemented.

96. Special Committees on Professional Conduct

(a) Upon receipt of a request pursuant to Rule 95, the Speaker and Minority Leader shall confidentially convene a Special Committee on Professional Conduct, which shall consist of 7 members, 5 of whom shall be appointed by the Speaker and 2 of whom shall be appointed by the Minority Leader. To the extent practicable, membership on the special committee shall be apportioned in a way that takes into account the nature of the complaint and the commitment of the House to providing fair and equal opportunity in employment. The Speaker shall appoint a member to serve as chair. No member who has declared his or her candidacy for any other local, state or federal office shall be appointed to a special committee. Upon appointment of members to the committee, the Speaker and Minority Leader shall notify the EEO Officer and the member who is the subject of the complaint of the identity of the members appointed. The existence of the committee and the identity of the members appointed to the committee shall otherwise remain confidential.

(b) The EEO Officer shall provide the members of the special committee with all records relevant to the investigation. The special committee shall review all records and may further investigate, to the extent that is necessary to resolve the complaint. The special committee may summon witnesses, administer

oaths, take testimony and compel the production of books, papers, documents and other evidence in connection with its review.

(c) In the case of a special committee convened under this section upon the request for a review by a member pursuant to paragraph (2) of subsection (a) of Rule 95, the committee shall determine whether the EEO Officer's intended action is proportional and appropriate under the circumstances. If a majority of the committee so finds, it shall order that the action recommended by EEO Officer be implemented, along with any additional disciplinary, remedial or preventative action, or any combination thereof, the committee determines to be proportional and appropriate under the circumstances, subject to the limitations set forth in subsection (d). If a majority of the committee finds that the intended action was not proportional or appropriate under the circumstances, it may make a new recommendation for disciplinary, remedial or preventative action, or any combination thereof, subject to the limitations set forth in said subsection (d). All determinations of the committee pursuant to this subsection shall be final.

(d) (1) If a majority of the committee finds that a member has violated Rule 88, it may take any disciplinary, remedial or preventative action, or any combination thereof, as it determines to be proportional and appropriate under the circumstances; provided, however, that if the committee determines that reprimand, censure, removal from position as a chair or other position of authority, or expulsion is proportional and appropriate under the circumstances, it shall file a report with the Clerk recommending that the House vote to implement the disciplinary action.

(2) Upon the filing of a report pursuant to paragraph (1), the Clerk shall promptly: (i) make the report available to all members electronically; (ii) cause the report to be posted on the website of the General Court; and (iii) place the matter in first position in the Orders of the Day for the next calendar day that the House is meeting; provided, however that no business shall be conducted on that calendar day or any day thereafter until the question of acceptance or rejection of the special committee's recommendation for discipline is decided by a majority of the members voting and present by a recorded roll call vote. If a majority of the members vote to accept the recommendation for discipline, the member shall be disciplined in the manner so recommended. Unless a majority of the members vote to accept the report, the member shall not be disciplined.

(3) All findings and determinations of the committee, including instances where the special committee does not file a report with the Clerk pursuant to paragraph (1), shall be reported to the EEO Officer and shall be final. The EEO Officer shall maintain confidential records of such findings and determinations, except that a report filed pursuant to paragraph (1) shall be public.

97. Confidentiality of Investigations

(a) Any information obtained by a member or employee in his or her official capacity and relating to a complaint or investigation of harassment pursuant to Rules 93 to 96, inclusive, and any records of such information shall be confidential to the fullest extent possible. Confidentiality shall be specifically subject to subsections (b), (c), (d) and (e).

(b) (1) The EEO Officer, in reviewing a complaint and conducting an investigation, shall keep the complaint confidential and shall not disclose the identity of the complainant or the person against whom the complaint is made, or any other details of the complaint with any member or employee; provided,

however, that the EEO Officer may share information to the extent necessary to interview witnesses or parties to the investigation or to consult with Counsel if the EEO Officer determines that such consultation is required in connection with the investigation.

(2) In the case of a complaint against a staff person, the EEO Officer shall maintain confidentiality throughout his or her investigation and implement all remedial actions and discipline short of termination confidentially, without sharing the identity of the complainant or the person against whom the complaint is made, or any other details of the complaint with any member or employee; provided, however, that the EEO Officer may share information to the extent necessary to implement any remedial actions or discipline or to consult with Counsel if the EEO Officer determines that such consultation is required in connection with the investigation. This paragraph shall not limit the EEO Officer's ability to transmit the resolution of a complaint, including any discipline resulting therefrom, to the Director for inclusion in the employee's personnel file.

(3) In the case of a complaint against a staff person, where the EEO Officer recommends termination, the EEO Officer shall share information with Counsel for review. If Counsel and the EEO Officer disagree as to whether termination is the appropriate discipline, confidentiality shall only be expanded to the extent needed to inform the Office of the Speaker, and reach a resolution.

(4) In the case of a complaint against a member, the EEO officer shall maintain confidentiality throughout his or her investigation by: (i) not disclosing information to any member or employee who is not a witness or party to the investigation, except to consult with Counsel if the EEO Officer determines that such consultation is required in connection with the investigation; and (ii) confidentially recommending all remedial actions short of reprimand, censure, removal from position as a chair or other position of authority or expulsion of a member. This paragraph shall not limit the EEO Officer's ability to: (i) share his or her report with the Office of the Speaker and the Minority Leader upon the request for a special committee pursuant to Rule 95; and (ii) share any records relevant to the investigation with the special committee convened pursuant to Rule 96; provided, that when sharing his or her report with the Office of the Speaker and the Minority Leader, the EEO Officer may use pseudonyms, redaction and other methods the EEO Officer considers appropriate to address the needs of a complainant or the circumstances of a complaint.

(c) (1) The establishment of a special committee pursuant to Rule 96 shall be completely confidential, except that the Speaker and Minority Leader shall disclose the names of their respective appointments to the EEO Officer. The EEO Officer shall maintain a confidential record of the membership of each special committee that is convened.

(2) All proceedings of a special committee convened pursuant to Rule 96 shall be confidential and members of the committee shall not share any information about the complaint and investigation for which the committee was convened with any other member or employee, including their own appointed staff; provided, however, that the committee may consult with Counsel if the chair of the committee determines that such consultation is required in connection with the investigation.

(3) A special committee convened pursuant to Rule 96 shall implement all actions short of reprimand, censure, removal from position as a chair or other position of authority or expulsion of a Member confidentially, except that the special committee shall submit a final report to the EEO Officer and may

consult with Counsel if the chair of the committee determines that such consultation is required in connection with their recommended action. The committee's recommendation, if any, for reprimand, censure, removal from position as a chair or other position of authority, or expulsion of a member, shall be a public document.

(d) All authorized parties shall keep complaints confidential, except to share the complaint with the EEO Officer.

(e) Nothing in this Rule shall limit the ability of the EEO Officer to share information with a complainant, to the extent appropriate, in order to properly conclude the complaint or investigation process.

98. Supplemental Policies, Procedures and Guidelines

The EEO Officer and the Director shall establish all policies, procedures and guidelines required by Rules 88 to 97, inclusive, and may develop supplemental policies, procedures and guidelines necessary to implement or enforce Rules 88 to 97, inclusive; provided, that no policy, procedure or guideline shall take effect without the prior review and written approval of Counsel and the committee on Personnel and Administration. Where appropriate, these policies, procedures and guidelines shall be included in the handbooks.

The EEO Officer and the Director may consult with each other, Counsel, and the committee on Personnel and Administration to carry out the requirements of Rules 88 to 97, inclusive.

99. Transition

Pending the appointment of an EEO Officer, a complaint alleging a violation of Rule 88 by a member shall be referred directly to a Special Committee on Professional Conduct, which shall conduct itself pursuant to Rule 96 except as modified by this Rule.

Pending the appointment of an EEO Officer and notwithstanding Rule 87 and utilizing sound business practices, the chair of a Special Committee on Professional Conduct convened pursuant to this Rule shall have the exclusive authority and discretion to retain outside legal and consulting experts, as the chair may deem appropriate to assist the chair and the committee with the investigation and evaluation of a complaint received by said committee.

Counsel shall, at the request of the chair, assist the chair and the Special Committee on Professional Conduct with the investigation and evaluation of a complaint received by the committee.