

ABUSIVE CONDUCT REPORTING AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to state employee reporting of abusive conduct.

Highlighted Provisions:

This bill:

▶ allows all state employees rather than executive agency employees to report abusive conduct to the Department of Human Resource Management or the employee's respective human resources department;

▶ requires an abusive conduct investigation in relation to an abusive conduct complaint;

▶ allows the administrator of the Career Service Review Office to conduct administrative reviews of all state employee abusive conduct complaints rather than executive agency employee complaints; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-19-44, as last amended by Laws of Utah 2018, Chapter 390



28 **67-19a-202**, as last amended by Laws of Utah 2018, Chapter 390

29 **67-19a-501**, as enacted by Laws of Utah 2018, Chapter 390



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

32 Section 1. Section **67-19-44** is amended to read:

33 **67-19-44. Abusive conduct.**

34 (1) As used in this section:

35 (a) (i) "Abusive conduct" means verbal, nonverbal, or physical conduct of an employee
36 to another employee that, based on its severity, nature, and frequency of occurrence, a
37 reasonable person would determine:

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

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

41 (C) exploits an employee's known physical or psychological disability.

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

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

45 (c) "Physical harm" means the impairment of a person's physical health or bodily
46 integrity, as established by competent evidence.

47 (d) "Psychological harm" means the impairment of a person's mental health, as
48 established by competent evidence.

49 (2) It is the policy of the state of Utah to provide and maintain a work environment free
50 from abusive conduct.

51 (3) (a) An employee may file a written complaint of abusive conduct with the
52 department [and] or the employee's respective human resources department.

53 (b) If an employee files a written complaint of abusive conduct with the employee's
54 respective human resources department under Subsection (3)(a), the human resources
55 department shall conduct an abusive conduct investigation.

56 (c) The complaint described in Subsection (3)(a) and any subsequent abusive conduct
57 investigation are subject to further administrative review in accordance with Section

58 **67-19a-501**.

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

62 (5) (a) The department shall provide biennial training to educate employees and
63 supervisors about how to prevent abusive workplace conduct.

64 (b) The training shall include information on:

65 (i) what constitutes abusive conduct and the ramifications of abusive conduct;

66 (ii) resources available to employees who are subject to abusive conduct; and

67 (iii) the grievance process.

68 (6) (a) Each state agency shall provide professional development training approved by
69 the department to promote:

70 (i) ethical conduct;

71 (ii) organizational leadership practices based in principles of integrity; and

72 (iii) the state policy described in Subsection (2).

73 (b) A state agency may request assistance from the department in developing training
74 under this Subsection (6).

75 (7) (a) Employers shall provide and employees shall participate in the training
76 described in Subsections (5) and (6) at the time the employee is hired or within a reasonable
77 time after the employee commences employment and in alternating years thereafter.

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

82 (8) The department may use money appropriated to the department or access support
83 from outside resources to:

84 (a) develop policies against workplace abusive conduct; and

85 (b) enhance professional development training on topics such as:

86 (i) building trust;

87 (ii) effective motivation;

88 (iii) communication;

89 (iv) conflict resolution;

- 90 (v) accountability;
- 91 (vi) coaching;
- 92 (vii) leadership; or
- 93 (viii) ethics.

94 (9) This section does not:

95 (a) exempt or relieve a person from a liability, duty, or penalty provided by another
96 federal or state law;

97 (b) create a private right of action;

98 (c) expand or diminish rights or remedies available to a person before July 1, 2015; or

99 (d) expand or diminish grounds for discipline that existed before July 1, 2015.

100 (10) The department shall annually report to the Economic Development and
101 Workforce Services Interim Committee by no later than the November interim meeting
102 regarding:

103 (a) the implementation of this section;

104 (b) recommendations, if any, to appropriately address and reduce workplace abusive
105 conduct or to change definitions or training required by this section; and

106 (c) an annual report of the total number and outcomes of abusive conduct complaints
107 that employees filed and the department investigated.

108 Section 2. Section **67-19a-202** is amended to read:

109 **67-19a-202. Powers -- Scope of authority.**

110 (1) The office shall serve as the final administrative body to review a grievance from a
111 career service employee and an agency of a decision regarding:

112 (a) a dismissal;

113 (b) a demotion;

114 (c) a suspension;

115 (d) a reduction in force;

116 (e) a dispute concerning abandonment of position;

117 (f) a wage grievance if an employee is not placed within the salary range of the
118 employee's current position;

119 (g) a violation of a rule adopted under Chapter 19, Utah State Personnel Management
120 Act; or

121 (h) except as provided by Subsection ~~[(1)(c)(iii)]~~ (4)(c), equitable administration of the
122 following benefits:

- 123 (i) long-term disability insurance;
- 124 (ii) medical insurance;
- 125 (iii) dental insurance;
- 126 (iv) post-retirement health insurance;
- 127 (v) post-retirement life insurance;
- 128 (vi) life insurance;
- 129 (vii) defined contribution retirement;
- 130 (viii) defined benefit retirement; and
- 131 (ix) a leave benefit.

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

134 (3) The office shall serve as the final administrative body to review the findings of an
135 abusive conduct investigation, either that the department conducts or that a state employee's
136 respective human resources department conducts in relation to a complaint described in
137 Subsection 67-19-44(3), without an evidentiary hearing.

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

- 139 (a) a personnel matter not listed in Subsections (1) through (3);
- 140 (b) a personnel matter listed in Subsections (1) through (3) that alleges discrimination
141 or retaliation related to a claim of discrimination that is a violation of a state or federal law for
142 which review and action by the office is preempted by state or federal law; or
- 143 (c) a personnel matter related to a claim for which an administrative review process is
144 provided by statute and administered by:

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

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

149 (iii) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21,
150 Public Employees' Long-Term Disability Act.

151 (5) The time limits established in this chapter supersede the procedural time limits

152 established in Title 63G, Chapter 4, Administrative Procedures Act.

153 Section 3. Section **67-19a-501** is amended to read:

154 **67-19a-501. Procedural steps to be followed in an administrative review of an**
155 **abusive conduct investigation.**

156 (1) An employee may initiate an administrative review of the findings of an abusive
157 conduct investigation, either that the department conducts or that a state employee's respective
158 human resources department conducts in relation to a complaint described in Subsection
159 67-19-44(3), within 10 days after the day on which the employee receives notification of the
160 investigative findings.

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

163 (b) The request for administrative review may set forth the reasons for the appeal and
164 include any submissions the employee desires to submit.

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

167 (i) the role of the administrative review is to review and rule upon the department's
168 findings and decision; and

169 (ii) an evidentiary hearing is not required.

170 (b) The department shall make the abusive conduct investigative file available for the
171 administrator's in camera review.

172 (c) The administrator may:

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

175 (ii) interview the department's investigators who conducted the investigation.

176 (4) (a) If the administrator determines that the investigator's findings are not
177 reasonable, rational, and sufficiently supported by the record, the administrator may overturn
178 the findings and remand to the agency or other state employer for appropriate action.

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

182 (5) (a) Within 30 days after the day on which an employee initiates an administrative

183 review under this section, the administrator shall issue a notice stating whether the
184 administrator upheld or overturned the investigative findings.

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

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

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

190 (ii) documents that any party provides;

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

192 (iv) the office's determination.