

**Representative Keven J. Stratton** proposes the following substitute bill:

**ABUSIVE CONDUCT REPORTING AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts the Utah Public Employees Healthy Workplace Act and amends existing provisions related to state employee reporting of abusive conduct.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ allows all state employees rather than executive agency employees to report abusive conduct to the employee's respective human resources department;
- ▶ requires an abusive conduct investigation in relation to an abusive conduct complaint;
- ▶ requires the Utah System of Higher Education to provide an appeal process;
- ▶ allows the Career Service Review Office to conduct administrative reviews of state employee abusive conduct complaints where the employer does not have an established appeals process; and
- ▶ makes technical changes and conforming.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **67-19a-202**, as last amended by Laws of Utah 2018, Chapter 390

30 **67-19a-501**, as enacted by Laws of Utah 2018, Chapter 390

31 ENACTS:

32 **67-26-101**, Utah Code Annotated 1953

33 **67-26-102**, Utah Code Annotated 1953

34 **67-26-103**, Utah Code Annotated 1953

35 **67-26-201**, Utah Code Annotated 1953

36 **67-26-202**, Utah Code Annotated 1953

37 RENUMBERS AND AMENDS:

38 **67-26-301**, (Renumbered from 67-19-44, as last amended by Laws of Utah 2018,

39 Chapter 390)



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

42 Section 1. Section **67-19a-202** is amended to read:

43 **67-19a-202. Powers -- Scope of authority.**

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

46 (a) a dismissal;

47 (b) a demotion;

48 (c) a suspension;

49 (d) a reduction in force;

50 (e) a dispute concerning abandonment of position;

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

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

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

- 57 (i) long-term disability insurance;
- 58 (ii) medical insurance;
- 59 (iii) dental insurance;
- 60 (iv) post-retirement health insurance;
- 61 (v) post-retirement life insurance;
- 62 (vi) life insurance;
- 63 (vii) defined contribution retirement;
- 64 (viii) defined benefit retirement; and
- 65 (ix) a leave benefit.

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

68 (3) The office shall serve as the final administrative body to review, without an  
69 evidentiary hearing, the findings of an abusive conduct investigation [~~without an evidentiary~~  
70 ~~hearing.~~] that:

- 71 (a) the department conducts for a state executive agency employee; or
- 72 (b) an employer described in Subsection 67-26-202(3)(b) conducts.

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

- 74 (a) a personnel matter not listed in Subsections (1) through (3);
- 75 (b) a personnel matter listed in Subsections (1) through (3) that alleges discrimination  
76 or retaliation related to a claim of discrimination that is a violation of a state or federal law for  
77 which review and action by the office is preempted by state or federal law; or
- 78 (c) a personnel matter related to a claim for which an administrative review process is  
79 provided by statute and administered by:

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

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

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

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

88 Section 2. Section **67-19a-501** is amended to read:

89 **67-19a-501. Procedural steps to be followed in an administrative review of an**  
90 **abusive conduct investigation.**

91 (1) An employee may initiate an administrative review of the findings of an abusive  
92 conduct investigation described in Subsection 67-19a-202(3)(a) or (b) within 10 days after the  
93 day on which the employee receives notification of the investigative findings.

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

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

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

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

102 (ii) an evidentiary hearing is not required.

103 (b) The [~~department~~] relevant employer shall make the abusive conduct investigative  
104 file available for the administrator's in camera review.

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

106 (i) request additional relevant documents from the [~~department~~] relevant employer or  
107 the affected employee; and

108 (ii) interview the [~~department's~~] investigators who conducted the investigation.

109 (4) (a) If the [~~administrator~~] office determines that the investigator's findings are not  
110 reasonable, rational, and sufficiently supported by the record, the [~~administrator~~] office may  
111 overturn the findings and remand to the [~~agency~~] respective employer for appropriate action.

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

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

118 (b) The office's determination upon administrative review of the findings resulting

119 from an abusive conduct investigation is final and not subject to appeal.

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

- 122 (i) the request for administrative review and any accompanying documents;
- 123 (ii) documents that any party provides;
- 124 (iii) the contents of the administrative review file; and
- 125 (iv) the office's determination.

126 Section 3. Section 67-26-101 is enacted to read:

127 **CHAPTER 26. UTAH PUBLIC EMPLOYEES HEALTHY WORKPLACE ACT**  
 128 **Part 1. General Provisions**

129 **67-26-101. Title.**

130 This chapter shall be known as "Utah Public Employees Healthy Workplace Act."

131 Section 4. Section 67-26-102 is enacted to read:

132 **67-26-102. Definitions.**

133 As used in this chapter:

134 (1) (a) "Abusive conduct" means verbal, nonverbal, or physical conduct of an  
 135 employee to another employee that, based on its severity, nature, and frequency of occurrence,  
 136 a reasonable person would determine:

- 137 (i) is intended to cause intimidation, humiliation, or unwarranted distress;
- 138 (ii) results in substantial physical or psychological harm as a result of intimidation,  
 139 humiliation, or unwarranted distress; or
- 140 (iii) exploits an employee's known physical or psychological disability.

141 (b) "Abusive conduct" does not mean a single act unless the act is an especially severe  
 142 and egregious act that meets the standard under Subsection (1)(a)(i), (ii), or (iii).

143 (2) "Abusive conduct complaint process" means the process described in Section  
 144 67-26-202.

145 (3) "Appeal process" means an administrative review under Section 67-19a-501 or an  
 146 employer's existing process that allows an employee to seek a review of an employment  
 147 decision.

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

149 (5) "Employee" means an employee of an employer.

- 150 (6) "Employer means the state, including:
- 151 (a) the executive branch, including:
- 152 (i) a state executive branch agency;
- 153 (ii) the Utah System of Higher Education; and
- 154 (iii) an independent entity, as defined in Section [63E-1-102](#);
- 155 (b) the legislative branch; and
- 156 (c) the judicial branch.
- 157 (7) "Physical harm" means the impairment of an individual's physical health or bodily
- 158 integrity, as established by competent evidence.
- 159 (8) "Psychological harm" means the impairment of an individual's mental health, as
- 160 established by competent evidence.

161 Section 5. Section **67-26-103** is enacted to read:

162 **67-26-103. Effect of chapter.**

163 This chapter does not:

- 164 (1) exempt or relieve a person from a liability, duty, or penalty provided by another
- 165 federal or state law;
- 166 (2) create a private right of action;
- 167 (3) expand or diminish rights or remedies available to a person before July 1, 2019; or
- 168 (4) expand or diminish grounds for discipline that existed before July 1, 2019.

169 Section 6. Section **67-26-201** is enacted to read:

170 **Part 2. Abusive Conduct**

171 **67-26-201. State policy on abusive conduct.**

172 It is the policy of the state of Utah to provide and maintain a work environment free

173 from abusive conduct.

174 Section 7. Section **67-26-202** is enacted to read:

175 **67-26-202. Abusive conduct complaint process.**

- 176 (1) An employee may file a written complaint of abusive conduct with the employer's
- 177 respective human resources department.
- 178 (2) If an employee files a written complaint of abusive conduct with the employer's
- 179 respective human resources department under Subsection (1), the human resources department
- 180 shall conduct an abusive conduct investigation.

181 (3) The Utah System of Higher Education shall provide an appeal process for  
182 employees within the Utah System of Higher Education.

183 (4) The complaint described in Subsection (1) and any subsequent abusive conduct  
184 investigation are subject to:

185 (a) in relation to the Utah System of Higher Education, the appeal process described in  
186 Subsection (3); or

187 (b) (i) if the employer has a human resources appeal process, the employer's human  
188 resources appeal process; or

189 (ii) if the employer does not have a human resources appeal process, further  
190 administrative review in accordance with Section [67-19a-501](#).

191 Section 8. Section **67-26-301**, which is renumbered from Section 67-19-44 is  
192 renumbered and amended to read:

193 ~~[67-19-44].~~ **67-26-301.** ~~67-19-44.~~ **Abusive conduct training.**

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

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

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

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

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

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

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

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

207 ~~[(d) "Psychological harm" means the impairment of a person's mental health, as~~  
208 ~~established by competent evidence.]~~

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

211 ~~[(3) An employee may file a written complaint of abusive conduct with the department~~

212 and subject to further administrative review in accordance with Section ~~67-19a-501.~~]

213 [~~(4)~~ By July 1, 2019, the]

214 (1) The department shall amend the department's ~~[rule]~~ rules, in accordance with Title

215 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the definitions in

216 [~~Subsection (1) and Title 67,~~] Section 67-26-102 and Chapter 19a, Grievance Procedures.

217 [~~(5)~~] (2) (a) The department shall ~~[provide]~~ create biennial training to educate

218 employees and supervisors about how to prevent abusive workplace conduct.

219 (b) The training shall include information on:

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

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

222 (iii) the ~~[grievance]~~ abusive conduct complaint process.

223 [~~(6)~~] (3) (a) Each ~~[state agency]~~ employer shall provide professional development

224 training approved by the department to promote:

225 (i) ethical conduct;

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

227 (iii) the state policy described in [~~Subsection (2)~~] Section 67-26-103.

228 (b) ~~[A state agency]~~ An employer may request assistance from the department in

229 developing training under this Subsection [~~(6)~~] (3).

230 [~~(7)~~] (4) (a) Employers shall provide and employees shall participate in the training

231 described in Subsections [~~(5)~~] (2) and [~~(6)~~] (3);

232 (i) at the time the employee is hired or within a reasonable time after the employee

233 ~~[commences]~~ begins employment; and

234 (ii) in alternating years ~~[thereafter]~~ after the employee begins employment.

235 [~~(b)~~ The requirement in Subsection (7)(a) includes notification to all employees at the

236 ~~time of hiring or within a reasonable time after the employee commences employment and in~~

237 ~~alternating years thereafter of the abusive conduct complaint procedures and the grievance~~

238 ~~procedures provided in Title 67, Chapter 19a, Grievance Procedures.]~~

239 (b) An employer shall provide notification to all employees at the times described in

240 Subsection (4)(a) of the abusive conduct complaint process.

241 [~~(8)~~] (5) The department may use money appropriated to the department or access

242 support from outside resources to:



243 (a) develop policies against workplace abusive conduct; and  
244 (b) enhance professional development training on topics such as:  
245 (i) building trust;  
246 (ii) effective motivation;  
247 (iii) communication;  
248 (iv) conflict resolution;  
249 (v) accountability;  
250 (vi) coaching;  
251 (vii) leadership; or  
252 (viii) ethics.  
253 ~~[(9) This section does not:]~~  
254 ~~[(a) exempt or relieve a person from a liability, duty, or penalty provided by another~~  
255 ~~federal or state law;]~~  
256 ~~[(b) create a private right of action;]~~  
257 ~~[(c) expand or diminish rights or remedies available to a person before July 1, 2015;~~  
258 ~~or]~~  
259 ~~[(d) expand or diminish grounds for discipline that existed before July 1, 2015.]~~  
260 (6) (a) By October 31 annually, each employer shall report to the department regarding  
261 the total number and outcomes of abusive conduct complaints that the employer's employees  
262 filed and the employer investigated.  
263 ~~[(10)]~~ (b) The department shall annually report to the Economic Development and  
264 Workforce Services Interim Committee by no later than the November interim meeting  
265 regarding:  
266 ~~[(a)]~~ (i) the implementation of this section;  
267 ~~[(b)]~~ (ii) recommendations, if any, to appropriately address and reduce workplace  
268 abusive conduct or to change definitions or training required by this section; and  
269 ~~[(c)]~~ (iii) an annual report of the total number and outcomes of abusive conduct  
270 complaints that employees filed and the department investigated.  
271 (iv) a summary of the reports the department receives under Subsection (6)(a).