

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

**Adopted and Filed Emergency**

**Rule making related to update of human resources policies and procedures**

The Administrative Services Department hereby amends Chapter 68, “Equal Employment Opportunity and Affirmative Action,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 8A.413, 19B.3 and 19B.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 8A.402 and 8A.413 and chapter 19B.

*Purpose and Summary*

These rules are being amended to update policies and procedures relating to reporting and investigation of sexual harassment, discrimination, equal opportunity and affirmative action complaints in the State of Iowa Executive Branch. The amendments provide that these complaints may be made directly to the Administrative Services Department or the Office of the Governor, rather than just within an agency. They also provide that the Administrative Services Department shall conduct investigations of such conduct unless otherwise directed by the Office of the Governor. In addition, the amendments clarify the confidentiality of the complaint and investigation process. These amendments are consistent with the revised policies that are being issued simultaneously with the adoption of these emergency amendments.

*Reason for Adoption of Rule Making Without  
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Administrative Services Department finds that notice and public participation are unnecessary or impractical because the emergency adoption was approved by Administrative Rules Review Committee.

In compliance with Iowa Code section 17A.3(3)“a,” the Administrative Rules Review Committee at its October 25, 2018, meeting reviewed the Administrative Services Department’s determination and this rule making and approved the emergency adoption.

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Administrative Services Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 25, 2018, because pursuant to 17A.5(2)“b”(1)(b), this rule making confers a benefit on the public or some segment thereof. This rule making also implements revised policies that provide processes that should be immediately available for state executive branch employees to report sexual harassment and discrimination.

*Adoption of Rule Making*

This rule making was adopted by the Administrative Services Department on October 25, 2018.

*Concurrent Publication of Notice of Intended Action*

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 4122C** to allow for public comment.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making became effective on October 25, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule ~~11—68.1(19B)~~, definition of "Sexual harassment," as follows:

*"Sexual harassment"* means persistent, repetitive, or highly egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs. ~~It may be directed at a specific individual or group of individuals. Conduct of a sexual nature will be considered harassing if it (1), which conduct threatens to impair the ability of a person to perform the duties of employment; (2) promises, threatens or in some manner affects a tangible employment benefit; or (3) threatens to impair the ability of a person to , or otherwise function normally within an institution responsible for the person's care, rehabilitation, education, or training.~~

ITEM 2. Amend subrule 68.2(2) as follows:

**68.2(2)** Each agency shall adhere to the provisions of the "State of Iowa Equal Opportunity, Affirmative Action and Anti-Discrimination Policy for Executive Branch Employees," ~~made effective by the governor on November 1, 2001.~~ and the "Policy Prohibiting Sexual Harassment for Executive Branch Employees."

ITEM 3. Rescind rule 11—68.6(19B) and adopt the following **new** rule in lieu thereof:

**11—68.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints.** The director shall have the authority to investigate practices prohibited under the "Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees" and the "Policy Prohibiting Sexual Harassment for Executive Branch Employees," adopted in accordance with Iowa Code section 19B.12. The director shall investigate any complaint pertaining to the policies specified in this rule unless directed by the governor to be investigated by another agency or entity.

**68.6(1) Confidentiality.** Complaints and records related to complaints, regardless of where the records are located, are confidential. These confidential records include, but are not limited to, all information gathered in the course of an investigation and investigative reports. Confidential records shall not be released unless ordered by a court of competent jurisdiction. This rule does not supersede the remedies provided under Iowa Code chapter 216.

**68.6(2) General procedures.**

*a.* Any person who feels that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” or the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” is encouraged to make a complaint pursuant to the complaint procedure outlined in the respective policies.

*b.* An agency shall immediately report all complaints pertaining to the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” or the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” to the department.

**68.6(3) Sexual harassment complaint procedures.** All employees shall have access to internal grievance procedures as authorized by Iowa Code section 19B.12 for reporting complaints of sexual harassment as set forth in the “Policy Prohibiting Sexual Harassment for Executive Branch Employees.”

*a.* Any employee who believes that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” is encouraged to bring a complaint to:

- (1) The employee’s immediate supervisor;
- (2) The next higher supervisor; or
- (3) The agency director or the employee identified by the agency to receive complaints of sexual harassment.

*b.* A complaint, including those concerning senior agency officials or agency directors, may be made directly to the department or the office of the governor without reporting the matter internally to the agency.

**68.6(4) Complaint investigation procedures.** The department shall investigate all complaints arising under the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” unless directed by the governor to be investigated by another agency or entity. All executive branch employees must cooperate fully with any investigation and may be subject to discipline up to and including termination of employment for failure to cooperate with an investigation. The department shall submit findings for an investigation conducted under this rule to the applicable agency or the office of the governor.

**68.6(5) Retaliation prohibited.** Any form of retaliation against an employee for resisting discriminatory or harassing behavior, reporting a complaint of discriminatory or harassing behavior, assisting a complainant who reports discriminatory or harassing behavior, or who cooperates in an investigation regarding discriminatory or harassing behavior is prohibited. Executive branch employees who engage in retaliatory behavior may be subject to discipline up to and including termination of employment. An employee who experiences retaliation prohibited under this subrule may report the retaliation through any of the avenues identified in this rule.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.