

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

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 were issued simultaneously with the adoption of these amendments.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 21, 2018, as **ARC 4122C**. This rule making was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 4121C** on the same date.

A public hearing was held on December 11, 2018, at 9 a.m. in the Procurement Conference Room, A Level, Hoover State Office Building, Des Moines, Iowa. Two people spoke at the hearing. Daniel Zeno, who identified himself as the policy director of the American Civil Liberties Union of Iowa, commented on Items 1, 2, and 3 of the Notice. Mr. Zeno addressed the topics of the definition of sexual harassment, training, investigations, a timeline regarding investigations, retaliation, and confidentiality of complaints. Kerri True-Funk, who identified herself as director of operations and special projects with the Iowa Coalition Against Sexual Assault, also spoke at the hearing. Ms. True-Funk commented on the topics of confidentiality, cooperation in investigations, retaliation, and policies in the State of Iowa Employee Handbook.

After the hearing, the Department received written comments from Mr. Zeno that addressed Items 1, 2, and 3 of the rules and addressed the topics of the definition of sexual harassment, training, the mechanics of investigations, a timeline related to investigations, confidentiality of complaints, and retaliation. The Department also received written comments after the hearing from Ms. True-Funk. Ms. True-Funk’s written comments addressed the topics of policies in the State of Iowa Employee Handbook, the definition of sexual harassment, investigation timelines and processes, training, confidentiality of complaints, and retaliation.

In Item 1, examples have been added to the definition of sexual harassment, as those examples are listed in Iowa Code section 19B.12. In Item 3, subrule 68.6(4), complaint investigation procedures have been detailed and a timeline included. In Item 3, subrule 68.6(5), the word “may” has been replaced

with the word “shall” pertaining to discipline of executive branch employees who engage in retaliatory behavior. A new Item 4, adopting new rule 11—68.7(19B) regarding mandatory training, has been added.

Adoption of Rule Making

This rule making was adopted by the Department on December 26, 2018.

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 will become effective on February 20, 2019, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

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. “Sexual harassment” may include, but is not limited to, the following: (1) unsolicited sexual advances by a person toward another person who has clearly communicated the other person’s desire not to be the subject of those advances; (2) sexual advances or propositions made by a person having superior authority toward another person within the workplace or institution; (3) instances of offensive sexual remarks or speech or graphic sexual displays directed at a person in the workplace or institution, who has clearly communicated the person’s objection to that conduct, and where the person is not free to avoid that conduct due to the requirements of the employment or the confines or operations of the institution; (4) dress requirements that bear no relation to the person’s employment responsibilities or institutional status.

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.

a. A complaint may be submitted on the form prescribed by the department or through other means, either orally or in writing. The complaint should at least contain the following:

- (1) The name and contact information of the person submitting the complaint;
- (2) The name(s) and contact information, if known, of the alleged harasser;
- (3) A statement of the allegations, including dates, if known, constituting the alleged discriminatory or harassing conduct; and
- (4) Any witnesses or persons to whom the allegations were reported.

b. Upon receipt or referral of a complaint, the department shall acknowledge the receipt of the complaint to the person submitting the complaint within five business days of receipt.

c. The investigation shall be initiated within ten days of the receipt of the complaint.

d. The investigation shall be completed within 30 days of the receipt of the complaint unless good cause can be shown that additional time is required. Reasons for additional time to complete the investigation beyond 30 days shall be documented in the investigation file. Extensions beyond 60 days must have prior approval by the director.

e. The investigation report shall include at least the following:

- (1) Background of the complaint;
- (2) Allegations;
- (3) Persons interviewed;
- (4) Analysis and findings; and
- (5) Conclusion.

f. Upon completion of the investigation, written correspondence regarding the conclusion of the investigation shall be sent to all parties interviewed during the course of the investigation.

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 shall 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.

ITEM 4. Adopt the following **new** rule 11—68.7(19B):

11—68.7(19B) Training. The department shall provide training to all executive branch state employees relating to sexual harassment awareness, prevention and reporting. Executive branch state employees shall complete sexual harassment training on an annual basis as provided by the department.

[Filed 12/26/18, effective 2/20/19]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.