

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(1) as follows:

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 4, 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.