

**WORKPLACE ABUSIVE CONDUCT AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Alvin B. Jackson**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to workplace abusive conduct.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definitions of "retaliatory action" and "adverse action" to include engaging in abusive conduct; and
- ▶ prohibits an employer from taking adverse action against an employee if the employee reports abusive conduct.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**67-19a-101**, as last amended by Laws of Utah 2013, Chapter 427

**67-21-2**, as last amended by Laws of Utah 2013, Chapter 427

**67-21-3**, as last amended by Laws of Utah 2013, Chapter 427

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

Section 1. Section **67-19a-101** is amended to read:



28 **67-19a-101. Definitions.**

29 As used in this chapter:

30 (1) "Administrator" means the person appointed under Section 67-19a-201 to head the  
31 Career Service Review Office.32 (2) "Career service employee" means a person employed in career service as defined in  
33 Section 67-19-3.34 (3) "Employer" means the state of Utah and all supervisory personnel vested with the  
35 authority to implement and administer the policies of an agency.

36 (4) "Grievance" means:

37 (a) a complaint by a career service employee concerning any matter touching upon the  
38 relationship between the employee and the employer;

39 (b) any dispute between a career service employee and the employer; and

40 (c) a complaint by a reporting employee that a public entity has engaged in retaliatory  
41 action against the reporting employee.42 (5) "Office" means the Career Service Review Office created under Section  
43 67-19a-201.44 (6) "Public entity" ~~[is as]~~ means the same as that term is defined in Section 67-21-2.45 (7) "Reporting employee" means an employee of a public entity who alleges that the  
46 public entity engaged in retaliatory action against the employee.47 (8) "Retaliatory action" means to do any of the following to an employee in violation of  
48 Section 67-21-3:

49 (a) dismiss the employee;

50 (b) reduce the employee's compensation;

51 (c) fail to increase the employee's compensation by an amount that the employee is  
52 otherwise entitled to or was promised;

53 (d) fail to promote the employee if the employee would have otherwise been promoted;

54 (e) cause the employee to resign by subjecting the employee to conditions that a  
55 reasonable person would consider intolerable; ~~[or]~~56 (f) engage in abusive conduct as defined in Section 67-19-44; or57 ~~[(f)]~~ (g) threaten to take an action described in Subsections (8)(a) through ~~[(e)]~~ (f).

58 (9) "Supervisor" means the person:

- 59 (a) to whom an employee reports; or
- 60 (b) who assigns and oversees an employee's work.

61 Section 2. Section **67-21-2** is amended to read:

62 **67-21-2. Definitions.**

63 As used in this chapter:

64 (1) "Abuse of authority" means an arbitrary or capricious exercise of power that:

- 65 (a) adversely affects the employment rights of another; or
- 66 (b) results in personal gain to the person exercising the authority or to another person.

67 (2) "Abusive conduct" means the same as that term is defined in Section 67-19-44.

68 [~~2~~] (3) "Adverse action" means:

- 69 (a) to discharge, threaten, or discriminate against an employee in a manner that affects
- 70 the employee's employment, including compensation, terms, conditions, location, rights,
- 71 immunities, promotions, or privileges[-]; or

72 (b) to engage in abusive conduct.

73 [~~3~~] (4) "Communicate" means a verbal, written, broadcast, or other communicated  
74 report.

75 [~~4~~] (5) "Damages" means general and special damages for injury or loss caused by  
76 each violation of this chapter.

77 [~~5~~] (6) "Employee" means a person who performs a service for wages or other  
78 remuneration under a contract of hire, written or oral, express or implied.

79 [~~6~~] (7) (a) "Employer" means the public body or public entity that employs the  
80 employee.

81 (b) "Employer" includes an agent of an employer.

82 [~~7~~] (8) "Gross mismanagement" means action or failure to act by a person, with  
83 respect to a person's responsibility, that causes significant harm or risk of harm to the mission  
84 of the public entity or public body that employs, or is managed or controlled by, the person.

85 [~~8~~] (9) "Judicial employee" means an employee of the judicial branch of state  
86 government.

87 [~~9~~] (10) "Legislative employee" means an employee of the legislative branch of state  
88 government.

89 [~~10~~] (11) "Political subdivision employee" means an employee of a political

90 subdivision of the state.

91 ~~[(11)]~~ (12) "Public body" means any of the following:

92 (a) a state officer, employee, agency, department, division, bureau, board, commission,  
93 council, authority, educational institution, or any other body in the executive branch of state  
94 government;

95 (b) an agency, board, commission, council, institution member, or employee of the  
96 legislative branch of state government;

97 (c) a county, city, town, regional governing body, council, school district, local district,  
98 special service district, or municipal corporation, board, department, commission, council,  
99 agency, or any member or employee of them;

100 (d) any other body that is created by state or local authority, or that is primarily funded  
101 by or through state or local authority, or any member or employee of that body;

102 (e) a law enforcement agency or any member or employee of a law enforcement  
103 agency; and

104 (f) the judiciary and any member or employee of the judiciary.

105 ~~[(12)]~~ (13) "Public entity" means a department, division, board, council, committee,  
106 institution, office, bureau, or other similar administrative unit of the executive branch of state  
107 government.

108 ~~[(13)]~~ (14) "Public entity employee" means an employee of a public entity.

109 ~~[(14)]~~ (15) "Retaliatory action" ~~[is-as]~~ means the same as that term is defined in  
110 Section [67-19a-101](#).

111 ~~[(15)]~~ (16) "State institution of higher education" ~~[is-as]~~ means the same as that term is  
112 defined in Section [53B-3-102](#).

113 ~~[(16)]~~ (17) "Unethical conduct" means conduct that violates a provision of Title 67,  
114 Chapter 16, Utah Public Officers' and Employees' Ethics Act.

115 Section 3. Section **67-21-3** is amended to read:

116 **67-21-3. Reporting of governmental waste or violations of law -- Employer action**  
117 **-- Exceptions.**

118 (1) (a) An employer may not take adverse action against an employee because the  
119 employee, or a person authorized to act on behalf of the employee, communicates in good  
120 faith:

- 121 (i) the waste or misuse of public funds, property, or manpower;
- 122 (ii) a violation or suspected violation of a law, rule, or regulation adopted under the law
- 123 of this state, a political subdivision of this state, or any recognized entity of the United States;
- 124 or
- 125 (iii) as it relates to a state government employer:
- 126 (A) gross mismanagement;
- 127 (B) abuse of authority; [~~or~~]
- 128 (C) unethical conduct[-]; or
- 129 (D) abusive conduct.
- 130 (b) For purposes of Subsection (1)(a), an employee is presumed to have communicated
- 131 in good faith if the employee gives written notice or otherwise formally communicates the
- 132 conduct described in Subsection (1)(a) to:
- 133 (i) a person in authority over the person alleged to have engaged in the conduct
- 134 described in Subsection (1)(a);
- 135 (ii) the attorney general's office;
- 136 (iii) law enforcement, if the conduct is criminal in nature;
- 137 (iv) if the employee is a public entity employee, public body employee, legislative
- 138 employee, or a judicial employee:
- 139 (A) the state auditor's office;
- 140 (B) the president of the Senate;
- 141 (C) the speaker of the House of Representatives;
- 142 (D) the governor's office;
- 143 (E) the state court administrator; or
- 144 (F) the Division of Finance;
- 145 (v) if the employee is a public entity employee, but not an employee of a state
- 146 institution of higher education, the director of the Division of Purchasing and General Services;
- 147 (vi) if the employee is a political subdivision employee:
- 148 (A) the legislative body, or a member of the legislative body, of the political
- 149 subdivision;
- 150 (B) the governing body, or a member of the governing body, of the political
- 151 subdivision;

- 152 (C) the top executive of the political subdivision; or
- 153 (D) any government official with authority to audit the political subdivision or the
- 154 applicable part of the political subdivision; or
- 155 (vii) if the employee is an employee of a state institution of higher education:
- 156 (A) the State Board of Regents or a member of the State Board of Regents;
- 157 (B) the commissioner of higher education;
- 158 (C) the president of the state institution of higher education where the employee is
- 159 employed; or
- 160 (D) the entity that conducts audits of the state institution of higher education where the
- 161 employee is employed.
- 162 (c) The presumption described in Subsection (1)(b) may be rebutted by showing that
- 163 the employee knew or reasonably ought to have known that the report is malicious, false, or
- 164 frivolous.
- 165 (2) An employer may not take adverse action against an employee because an
- 166 employee participates or gives information in an investigation, hearing, court proceeding,
- 167 legislative or other inquiry, or other form of administrative review held by the public body.
- 168 (3) An employer may not take adverse action against an employee because the
- 169 employee has objected to or refused to carry out a directive that the employee reasonably
- 170 believes violates a law of this state, a political subdivision of this state, or the United States, or
- 171 a rule or regulation adopted under the authority of the laws of this state, a political subdivision
- 172 of this state, or the United States.
- 173 (4) An employer may not implement rules or policies that unreasonably restrict an
- 174 employee's ability to document:
- 175 (a) the waste or misuse of public funds, property, or manpower;
- 176 (b) a violation or suspected violation of any law, rule, or regulation; or
- 177 (c) as it relates to a state government employer:
- 178 (i) gross mismanagement;
- 179 (ii) abuse of authority; [~~or~~]
- 180 (iii) unethical conduct[~~;~~]; or
- 181 (iv) abusive conduct.

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**