



RULE 27

RESPECTFUL WORKPLACE

BOR YANG

LEGISLATIVE EQUITY OFFICE

A background image of dandelion seeds, with a dark rectangular box on the left side containing the word 'Agenda' in white serif font.

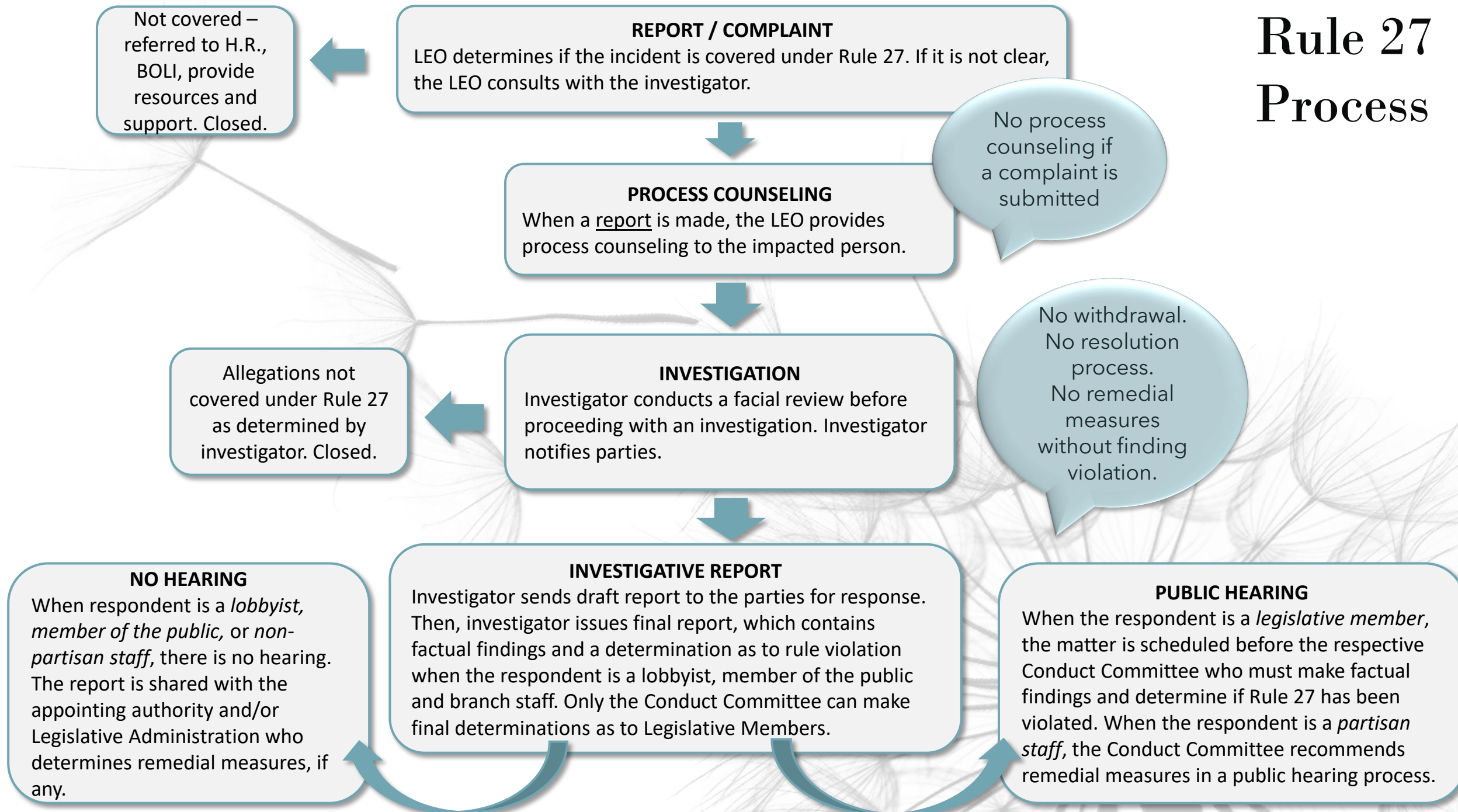
Agenda

1. Review
2. What is Sexual Harassment?
3. A Historical Perspective
4. Discussion
5. Rule 27 Data & The Capitol Culture and Climate Survey Results
6. The Future of Rule 27
7. Feedback

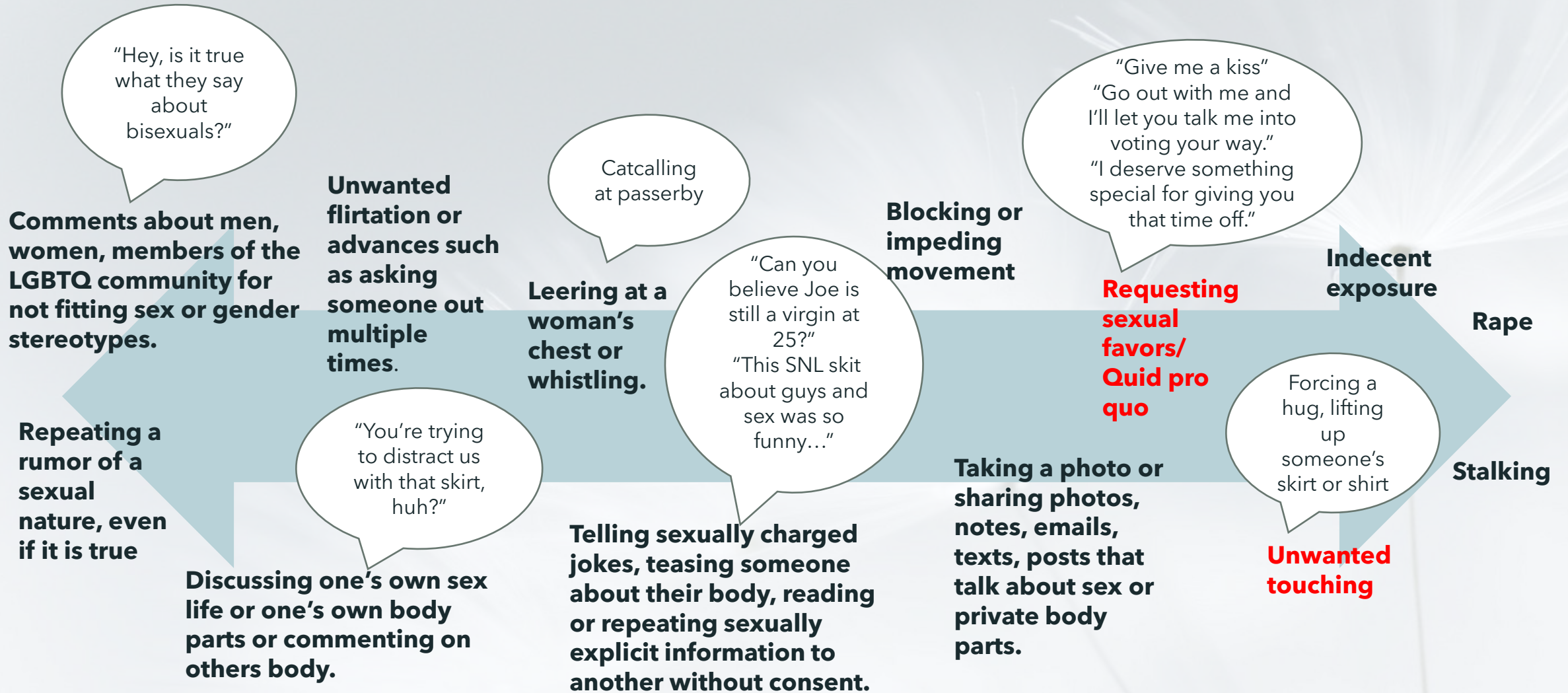
REVIEW

	Respectful Workplace Policy	LBRP 27 (Rule 27)
Purpose	To provide a workplace that is safe, respectful, professional and free of inappropriate and disrespectful behavior.	To eradicate harassment, discrimination and retaliation in the workplace and legislative business.
Applicability	Members, Employees, Interns Externs, Volunteers & Lobbyists	Members, Employees, Interns, Externs, Volunteers, Lobbyists, Contractors or employees of contractors, State of Oregon employees & members of the public
Prohibitions	Unwelcome or unwanted comments, actions, or behaviors by an individual or group that causes the effect of, and a reasonable person would find to be, embarrassing, humiliating, intimidating, disparaging, demeaning, or threatening; and has the effect of or is intended to unreasonably interfere with their job performance or causes fear in the workplace.	Sexual Harassment Harassment on the basis of protected class status (Race, National Origin, Religion, Disability, Gender Identity, Sexual Orientation, etc.) Discrimination Retaliation
Enforcement Office	Human Resources (Employee Services) 900 Court St. NE, Salem 503-986-1373	Legislative Equity Office 255 Capitol St. NE, Room 127, Salem 503-986-1625

Rule 27 Process



Sexual Harassment is...



Sexual harassment does not require the action be motivated by attraction or desire. It is always unwanted.



Primary goal

RECONCILE OUR PAST WITH OUR PRESENT PRACTICES.

CASE STUDY: WHO IS ANITA HILL?

- President George H.W. Bush nominated Clarence Thomas to the Supreme Court in 1991. Shortly after the announcement, rumors spread that he might have engaged in sexual harassment against one of his employees, Anita Hill, while he was the chair of the Equal Employment Opportunity Commission (EEOC).
- Thomas's nomination confirmation seemed assured until a report of a private interview of Dr. Hill by the FBI was leaked to the press. The hearings were then reopened, and Dr. Hill was subpoenaed to testify publicly.
- Dr. Hill had not filed a formal complaint.
- The Judiciary Committee, chaired by then-Senator Joe Biden, consisted of only white men. There were only two female senators in 1991.
- Four female witnesses waited in the wings to support Dr. Hill's credibility, but they were not called, due to a compromise deal between Republicans and then Senator Joe Biden.
- While senators and other authorities observed that polygraph results cannot be relied upon and are inadmissible in courts, Dr. Hill's results did support her statements. Justice Thomas did not take a polygraph test.
- Justice Thomas defended himself by claiming Dr. Anita Hill's testimony was an example of racism against Black men.
- After extensive debate, the Senate confirmed Thomas to the Supreme Court by a vote of 52–48, where he is seated today.

<https://youtu.be/4oPnd911FcM?feature=shared>

Discussion Questions

1


Both Justice Thomas and Dr. Hill were experts on harassment laws. But this didn't stop him and she never filed a complaint. Why?

2

What would have been the impact of greater gender and racial representation on the process or outcome?

3

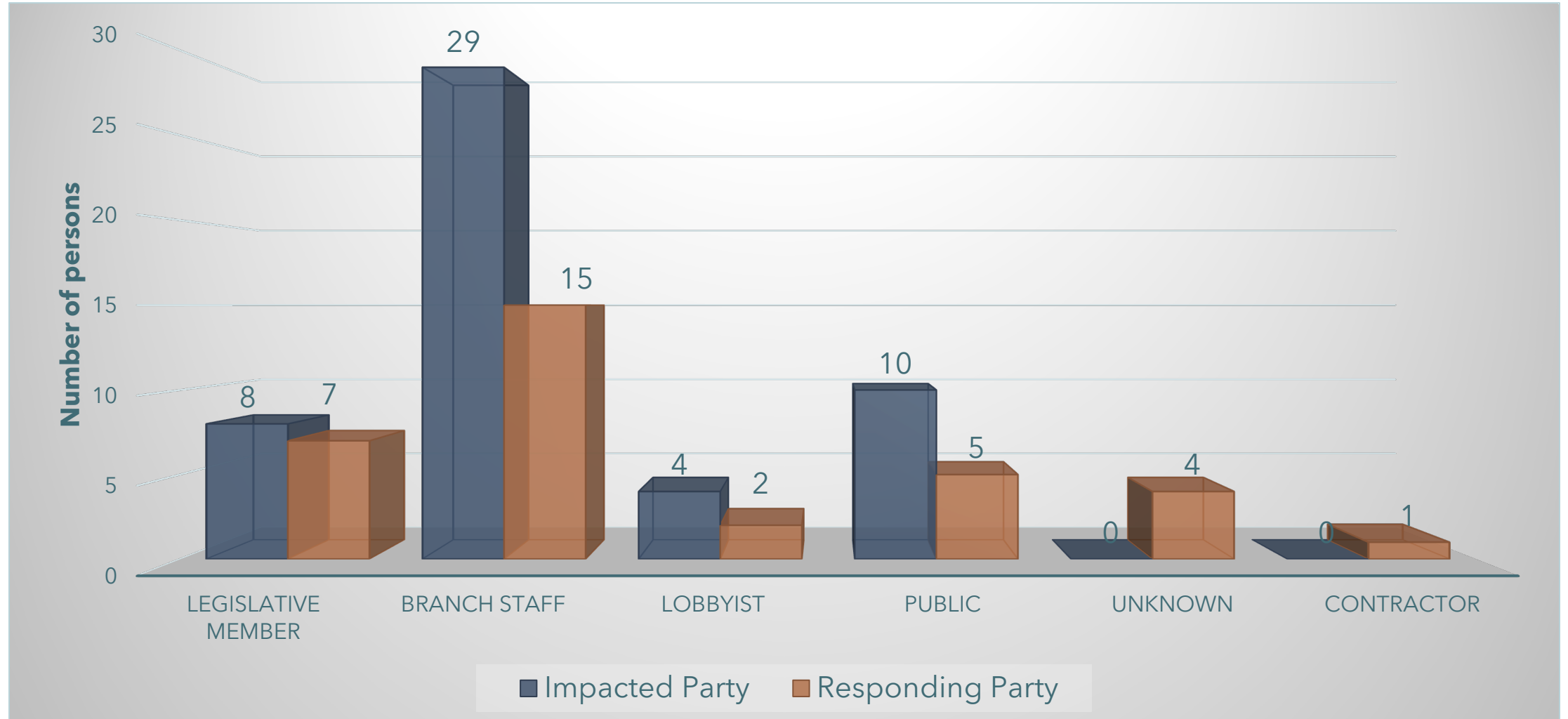
How do we balance appropriate and necessary inquiry against harm to an impacted party?

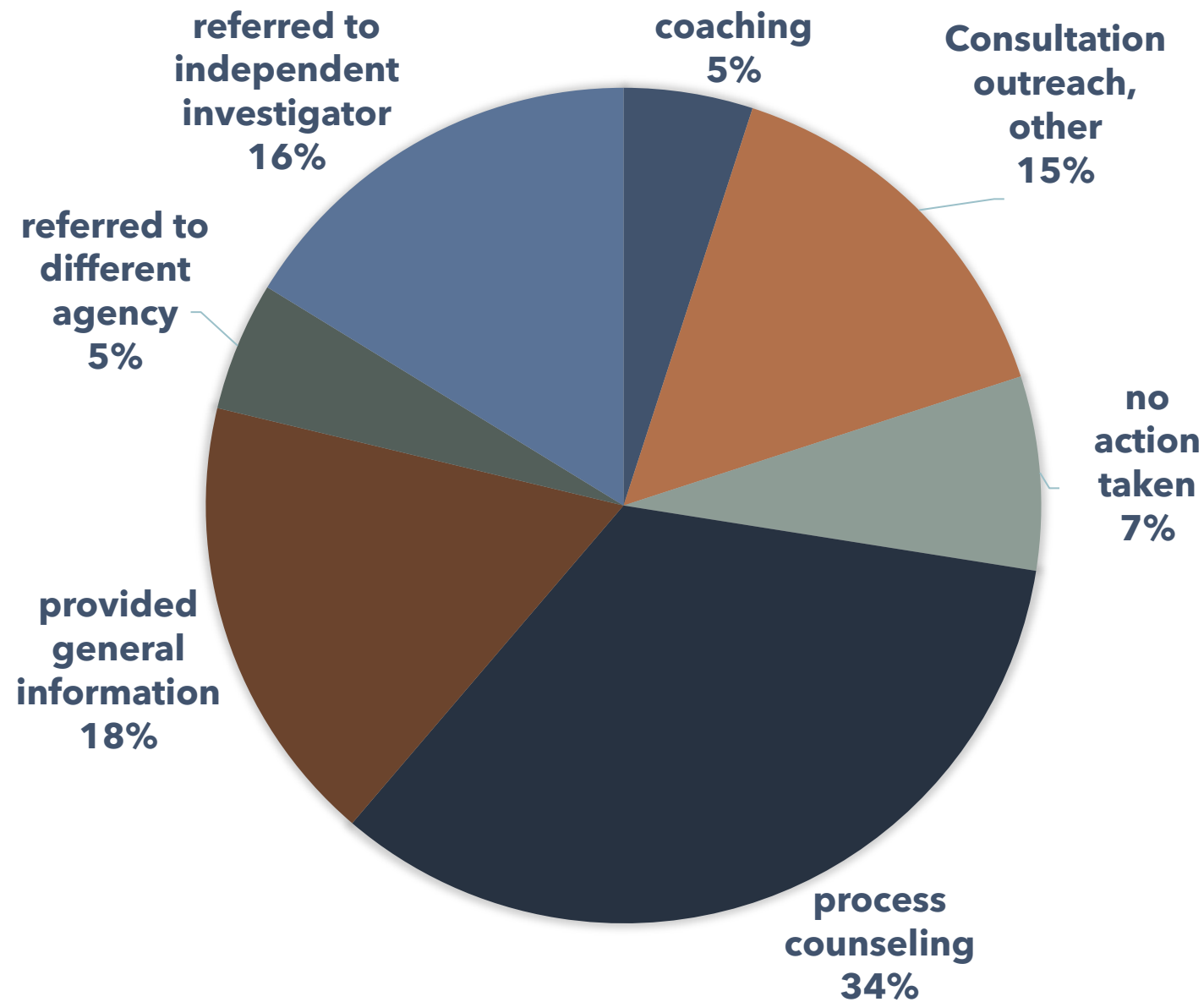


Rule 27 Data from 2023-2024

- The LEO received **60** reports concerning **53** separate incidents; **39** triggered a Rule 27 review.
- Most reports are related to Rule 27 (74%).
- Most incidents occur at the State Capitol followed by a virtual platform, i.e. social media.
- Sex is the most frequent basis for allegations of harassment and discrimination.
- Staff contact the LEO more than any other group, followed by Members, the Public and then Lobbyists.

The Parties Involved in Rule 27





What
Services
were
Provided?

Investigation Outcomes

What gets referred?

Thirteen (13) referrals were made to the investigator concerning nine (9) separate factual circumstances.

Investigator declined to investigate after facial review in six matters:

- Statute of Limitations expired
- Allegations outside scope of Rule 27
- Complainant failed to cooperate

Three investigations opened

- Investigator found violation of Rule 27
- Investigator found no violation of Rule 27
- House Conduct Committee found no violation



Culture & Climate Survey

Key Takeaways

- Across all participants, 20% experienced harassment and 22% experienced discrimination at least once in the past five years.
- Almost one third of those who reported harassment said it was sexual harassment.
- A majority of those who report having experienced discrimination said it was because of their sex.
- Lobbyists make up the greatest number of individuals who have experienced harassment. Legislative Members experience harassment at a higher rate than branch staff or lobbyists.
- Women, people of color, LGBTQ individuals and employees under 40 were more likely to experience prohibited behavior and generally had less positive perceptions of workplace climate

Culture & Climate Survey


Key Takeaways

- Only 18% of those who experienced harassment and 11% of those who experienced discrimination said they reported it.
- Retaliation was rare, but reporting rates were low. Fewer than 5% of those who reported an incident faced retaliation.
- Participants who felt respected, treated fairly and confident in leadership were less likely to experience prohibited behavior and more likely to report it.
- Compared with Gallup's public administration database, the Oregon State Legislature scored near or below the 25th percentile on key items related to workplace climate.
- Harassment occurs at the State Capitol more than any other location.



WHAT'S NEXT?

AMENDING RULE 27



Why Change Rule 27?

WHAT IS THE PURPOSE OF THE RULE?

Enforcement is a tool for individual accountability and change

Enforcement is also a tool for driving systemic change

- Cases inform training content

- Public hearings inform the capitol community of appropriate behavior

- Case data informs policy

WHAT CHANGES ARE NECESSARY TO ACCOMPLISH THIS PURPOSE?

Streamline an unnecessarily complex rule and process

Create greater transparency and clarity in the role and responsibilities of the LEO, the investigator, the Conduct Committee

Remove barriers to reporting

Proposed Changes to Rule 27

TECHNICAL MINOR SUBSTANTIVE

- Eliminating confusing distinctions, i.e. complaint vs. reports vs. disclosures.
- Eliminating confusing language in the definitions of discrimination, harassment, retaliation.
- List of prohibited behavior is incomplete and confusing.
- Permitting LEO to recommend safety and remedial measures, provide technical assistance to investigator, etc.

POLICY MAJOR SUBSTANTIVE

- Defining "legislative business."
- Investigations without impacted party involvement.
- Should investigator make the same determination regardless of who the respondent is?
- Should failure to report be covered?
- Should the rule provide a path for resolution without a public hearing?
- Exceptions to confidentiality.
- Filling in the gaps between the laws and policy.

DEFINING WORKPLACE & LEGISLATIVE BUSINESS

Rule 27 applies to conduct in the workplace and legislative business. But these terms are currently undefined.



"WORKPLACE" & "LEGISLATIVE BUSINESS" ARE UNDEFINED.



WORKPLACE SHOULD BE DEFINED SAME AS IT IS UNDER STATE AND FEDERAL LAW.



WHAT IS LEGISLATIVE BUSINESS?

Defining “Legislative Business:”

Should “Legislative Business:”

1. Be limited to a physical location such as the State Capitol or on the grounds?
 - What about a legislative member’s field office?
 - What about a town hall meeting?
 - What about a campaign fundraising reception?
 - An off-site event hosted by a current legislative member?
2. Be limited to discussions relating to an existing or possible measure, motion or action item of a chamber or committee or discussions relating to members, staff, lobbyists, no matter where the location?
3. Include any discussion or action that has a nexus to business conducted at the State Capitol?
 - i.e. Lobbyist and Member engage in mutual intimate relationship that turns sour and now creates a hostile environment at the State Capitol.
4. Include communications and actions occurring during campaigns?





Policies should be better than laws

Currently, Rule 27 has different definitions of harassment; one definition requires that harassment be “severe or pervasive.”

Proposed Change: Adopt same definition and eliminate “severe or pervasive.”

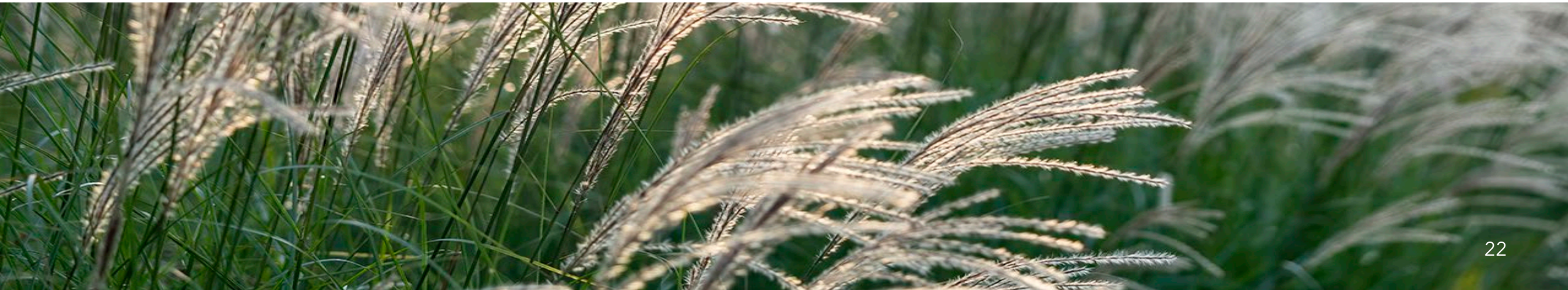
Reasoning:

- The interpretation of this legal standard over decades has created an impossible bar to surpass.
- It’s already been eliminated in many jurisdictions.
- Using legal definitions in policies creates a chilling effect on informal resolutions/settlements. Respondents are less likely to settle if it appears as an admission of unlawful behavior.

What to do when there is no willing participant?

Currently, the LEO cannot investigate without participation of impacted party. But what happens with...

- Anonymous reports?
- When there is a pattern of inappropriate behavior but no willing participants?
- The evidence comes from source(s) independent of impacted party – video and audio recordings?



A background image of dandelion seed heads, some in focus and some blurred, creating a soft, natural aesthetic.

Too Much Power?

If we allow investigations without an impacted party, aren't we giving the Legislative Equity Office too much power?

NO because...

- The LEO only has the power to refer.
- The investigator conducts a facial review and determines if an investigation should be open.
- The respective Conduct Committee determines the outcome for legislative members.
- If Rule 27 has alternative dispute resolutions, the potential for a public hearing is lessened.

Should the investigator make the same determination regardless of respondent's role?

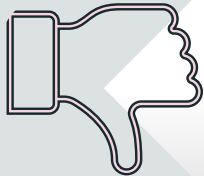


Members → No Rule 27 determination
Non-Members → Rule 27 determination

Compromise. YES, permit investigator to make preliminary determination but rest the final determination in conduct committee.



YES. Impartiality, Consistency, Trust



NO. Members should be separated because they are elected by the public.

What are the consequences for failing to report?

NONE. Should failing to report be added to the list of prohibited activities?

NO

Most people don't know when they should report. This failure should be met with training, not an investigation.

or

YES

Requirements without consequences are ineffective; there are instances when imposing remedial measures would be appropriate.

Informal Resolutions & Mediation.

Currently, there are no alternative dispute resolutions in Rule 27. Should parties have the right to resolve their cases to avoid an investigation and hearing?

Possible compromise:
Make resolutions public when respondents are members but redact identifying information of complainants and witnesses.

Bad actors will settle their cases and continue to act badly.

Public accountability is critical for cultural change.

Private dealings diminish the public's right to know about their elected officials.

NO

Remedial measures are rarely imposed through a hearing process.

Parties should have the right to resolve their cases as they wish.

Publicity hurts victims and witnesses as well as respondents.

More people will report if they are not subjected to public hearing.

YES

Exceptions to Confidentiality

Current	Proposed Changes
Threat of immediate physical harm or intent to commit crimes or otherwise required by law.	No Change
Non-personally identifiable data for coaching and training purposes.	No Change
Non-personally identifiable data to encourage individual to make report.	No Change
LEO may share information and records w/ investigator.	No Change
Copy of complaint is delivered to caucus leader or presiding officer, appointing authority or legislative administrator depending on role of respondent.	Limited information shared only to effectuate interim safety measures and/or if LEO or investigator determines there is a legitimate need to know.
Complaint is public record as soon as it is submitted to LEO or investigator.	Eliminate.
Following a complaint (but not a report or disclosure), all investigative records become public after investigation concludes when the respondent is a legislative member.	Settlement agreement, written summary of resolution, investigative report when legislative member is the respondent and only at the time the report is delivered to the conduct committee.
All investigative records become public after remedial measures imposed upon non-legislative members.	Only investigative report is public after remedial measures imposed upon non-legislative members.

What is missing from Rule 27?



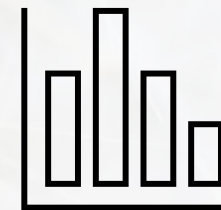
Currently, Rule 27 does not provide any path to review, investigate or resolve these claims:

Disparate Impact: When a facially neutral policy has a disproportionate impact on a protected class when applied.

Pay equity issues.

Wrongful denial of reasonable accommodation requests due to pregnancy, disability or religious beliefs.

The Respectful Workplace Policy: H.R. has authority over the policy, not the LEO.





Thank You!

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