
SECOND SUBSTITUTE HOUSE BILL 1522

State of Washington

68th Legislature

2023 Regular Session

By House Appropriations (originally sponsored by Representatives Pollet, Leavitt, Berry, and Macri)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to addressing sexual misconduct at scholarly or
2 professional associations; amending RCW 28B.112.040 and 28B.112.080;
3 and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** In 2020 the legislature established RCW
6 28B.112.080 requiring colleges and universities statewide, both
7 public and private, to ask job applicants to declare whether they had
8 been the subject of substantiated findings of sexual misconduct by a
9 current or previous employer, whether they are the subject of current
10 investigations of sexual misconduct by their employer, or whether
11 they resigned employment during an ongoing investigation. It requires
12 postsecondary educational institutions to request documentation of
13 substantiated findings or investigations prior to extending an offer
14 of employment.

15 In academic settings, sexual misconduct can take place outside
16 the context of employment. For example, an employee of one university
17 might harass a student or employee of a different university in a
18 professional setting such as a conference or meeting. A growing
19 number of scholarly associations sponsoring conferences or other
20 events have adopted codes of conduct and investigative procedures to
21 address the problem of sexual misconduct in these contexts. The

1 legislature intends to expand the declaration required of applicants
2 for employment to include substantiated findings by scholarly
3 associations. Further, the legislature intends to expand the
4 requirement to request documentation to include substantiated
5 findings generated by scholarly associations.

6 **Sec. 2.** RCW 28B.112.040 and 2020 c 335 s 2 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this section and
9 RCW 28B.112.050 through 28B.112.080 unless the context clearly
10 requires otherwise.

11 (1) "Applicant" means a person applying for employment as
12 faculty, instructor, staff, advisor, counselor, coach, athletic
13 department staff, and any position in which the applicant will likely
14 have direct ongoing contact with students in a supervisory role or
15 position of authority. "Applicant" does not include enrolled students
16 who are applying for temporary student employment with the
17 postsecondary educational institutions, unless the student is a
18 graduate student applying for a position in which the graduate
19 student will have a supervisory role or position of authority over
20 other students. "Applicant" does not include a person applying for
21 employment as medical staff or for employment with an affiliated
22 organization, entity, or extension of a postsecondary educational
23 institution, unless the applicant will have a supervisory role or
24 position of authority over students.

25 (2) "Association" means a scholarly or professional organization
26 or learned society that sponsors activities or events for the benefit
27 of individuals affiliated with postsecondary educational
28 institutions, with a code of conduct forbidding sexual misconduct at
29 such activities or events, and established investigative procedures
30 for allegations that the code of conduct has been violated.

31 (3) "Employee" means a person who is receiving or has received
32 wages as an employee from the postsecondary educational institutions
33 and includes current and former workers, whether the person is
34 classified as an employee, independent contractor, or consultant, and
35 is in, or had, a position with direct ongoing contact with students
36 in a supervisory role or position of authority. "Employee" does not
37 include a person who was employed by the institution in temporary
38 student employment while the person was an enrolled student unless
39 the student, at the time of employment, is or was a graduate student

1 in a position in which the graduate student has or had a supervisory
2 role or authority over other students. "Employee" does not include a
3 person employed as medical staff or with an affiliated organization,
4 entity, or extension of a postsecondary educational institution,
5 unless the employee has or had a supervisory role or position of
6 authority over students. A person who would be considered an
7 "employee" under this subsection, remains an "employee" even if the
8 person enrolls in classes under an institution's employee tuition
9 waiver program or similar program that allows faculty, staff, or
10 other employees to take classes.

11 ~~((3))~~ (4) "Employer" includes postsecondary educational
12 institutions in this or any other state.

13 ~~((4))~~ (5) "Investigation" means a procedure initiated in
14 response to a formal complaint, as defined in 34 C.F.R. Sec. 106.30,
15 provided that the procedure fully complies with the provisions of 34
16 C.F.R. Sec. 106.45.

17 (6) "Postsecondary educational institution" means an institution
18 of higher education as defined in RCW 28B.10.016, a degree-granting
19 institution as defined in RCW 28B.85.010, a private vocational school
20 as defined in RCW 28C.10.020, or school as defined in RCW 18.16.020,
21 that participates in the state student financial aid program.

22 ~~((5))~~ (7) "Sexual misconduct" includes, but is not limited to,
23 unwelcome sexual contact, unwelcome sexual advances, requests for
24 sexual favors, other unwelcome verbal, nonverbal, electronic, or
25 physical conduct of a sexual nature, sexual harassment, and any
26 misconduct of a sexual nature that is in violation of the
27 postsecondary educational institution's policies or has been
28 determined to constitute sex discrimination pursuant to state or
29 federal law.

30 ~~((6))~~ (8) "Student" means a person enrolled at a postsecondary
31 educational institution and for whom educational records are
32 maintained.

33 (9) "Substantiated findings" means a written determination
34 regarding responsibility as described in 34 C.F.R. Sec. 106.45(b)(7)
35 prepared at the conclusion of an investigation, as amended by any
36 appeals process.

37 **Sec. 3.** RCW 28B.112.080 and 2020 c 335 s 6 are each amended to
38 read as follows:

1 (1) Beginning October 1, 2020, prior to an official offer of
2 employment to an applicant, a postsecondary educational institution
3 shall request the applicant to sign a statement:

4 (a) Declaring whether the applicant is the subject of any
5 substantiated findings of sexual misconduct in any current or former
6 employment or by any association with which the applicant has, or has
7 had, a professional relationship, is currently being investigated
8 for, or has left a position during an investigation into, a violation
9 of any sexual misconduct policy at the applicant's current and past
10 employers, and, if so, an explanation of the situation;

11 (b) Authorizing the applicant's current and past employers or
12 relevant associations to disclose to the hiring institution any
13 sexual misconduct committed by the applicant and making available to
14 the hiring institution copies of all documents in the previous
15 employer's personnel, investigative, or other files relating to
16 sexual misconduct, including sexual harassment, by the applicant; and

17 (c) Releasing the applicant's current and past employers or
18 relevant associations, and employees acting on behalf of that
19 employer or association, from any liability for providing information
20 described in (b) of this subsection.

21 (2) Beginning July 1, 2021, prior to an official offer of
22 employment to an applicant, a postsecondary educational institution
23 shall:

24 (a) Request in writing, electronic or otherwise, that the
25 applicant's current and past postsecondary educational institution
26 employers, or relevant associations when a finding has been declared
27 by the applicant, provide the information, if any, described in
28 subsection (1)(b) of this section. The request must include a copy of
29 the declaration and statement signed by the applicant under
30 subsection (1) of this section; and

31 (b) Ask the applicant if the applicant is the subject of any
32 substantiated findings of sexual misconduct, or is currently being
33 investigated for, or has left a position during an investigation
34 into, a violation of any sexual misconduct policy at the applicant's
35 current and past employers, and, if so, an explanation of the
36 situation.

37 (3)(a) Pursuant to (c) of this subsection, after receiving a
38 request under subsection (2)(a) of this section, a postsecondary
39 educational institution shall provide the information requested and
40 make available to the requesting institution copies of documents in

1 the applicant's personnel record relating to substantiated findings
2 of sexual misconduct.

3 (b) Pursuant to (c) of this subsection, if a postsecondary
4 educational institution has information about substantiated findings
5 of a current or former employee's sexual misconduct in the employee's
6 personnel file or employment records, unless otherwise prohibited by
7 law, the institution shall disclose that information to any employer
8 conducting reference or background checks on the current or former
9 employee for the purposes of potential employment, even if the
10 employer conducting the reference or background check does not
11 specifically ask for such information.

12 (c) If, by June 11, 2020, a postsecondary educational institution
13 does not have existing procedures for disclosing information
14 requested under this subsection, the institution must establish
15 procedures to begin implementing the disclosure requirements of this
16 subsection no later than July 1, 2021.

17 (4) (a) The postsecondary educational institution or an employee
18 acting on behalf of the institution, who discloses information under
19 this section is presumed to be acting in good faith and is immune
20 from civil and criminal liability for the disclosure.

21 (b) A postsecondary educational institution is not liable for any
22 cause of action arising from nondisclosure of information by an
23 employee without access to official personnel records who is asked to
24 respond to a reference check.

25 (c) The duty to disclose information under this section is the
26 responsibility of the postsecondary educational institution to
27 respond to a formal request for personnel records relating to a
28 current or prior employee when requested by another employer.

29 (5) (a) When disclosing information under this section, the
30 postsecondary educational institution shall keep personal identifying
31 information of the complainant and any witnesses confidential, unless
32 the complainant or witnesses agree to disclosure of their identifying
33 information.

34 (b) Personal identifying information that reveals the identity of
35 the complainant and any witnesses is exempt from public disclosure
36 pursuant to RCW 42.56.375.

37 (6) Beginning October 1, 2020, a postsecondary educational
38 institution may not hire an applicant who does not sign the statement
39 described in subsection (1) of this section.

1 (7) Information received under this section may be used by a
2 postsecondary educational institution only for the purpose of
3 evaluating an applicant's qualifications for employment in the
4 position for which the person has applied.

5 (8) This section does not restrict expungement from a personnel
6 file or employment records of information about alleged sexual
7 misconduct that has not been substantiated.

8 (9) Public institutions of higher education shall share best
9 practices with all faculty and staff who are likely to receive
10 reference check requests about how to inform and advise requesters to
11 contact the institution's appropriate official office for personnel
12 records.

13 (10) The student achievement council shall convene a work group
14 and report to the legislature by November 30, 2024, regarding the
15 ability of institutions of higher education to consider if applicants
16 or current employees have committed sexual misconduct at meetings or
17 conferences of academic and professional associations; and, how
18 institutions of higher education and Washington agencies may
19 encourage adoption of policies and procedures regarding sexual
20 misconduct committed at such association events.

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