
HOUSE BILL 1522

State of Washington

68th Legislature

2023 Regular Session

By Representatives Pollet, Leavitt, Berry, and Macri

Read first time 01/23/23. Referred to Committee on Postsecondary Education & Workforce.

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, the "pass the harasser" law, requiring colleges and
7 universities statewide, both public and private, to ask job
8 applicants to declare whether they had been the subject of
9 substantiated findings of sexual misconduct by a current or previous
10 employer, whether they are the subject of current investigations of
11 sexual misconduct by their employer, or whether they resigned
12 employment during an ongoing investigation. It requires postsecondary
13 educational institutions to request documentation of substantiated
14 findings or investigations prior to extending an offer 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 or current
3 investigations by scholarly associations. Further, the legislature
4 intends to expand the requirement to request documentation to include
5 substantiated findings or investigations generated by scholarly
6 associations.

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

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

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

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

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

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

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

14 ~~((4))~~ (5) "Postsecondary educational institution" means an
15 institution of higher education as defined in RCW 28B.10.016, a
16 degree-granting institution as defined in RCW 28B.85.010, a private
17 vocational school as defined in RCW 28C.10.020, or school as defined
18 in RCW 18.16.020, that participates in the state student financial
19 aid program.

20 ~~((5))~~ (6) "Sexual misconduct" includes, but is not limited to,
21 unwelcome sexual contact, unwelcome sexual advances, requests for
22 sexual favors, other unwelcome verbal, nonverbal, electronic, or
23 physical conduct of a sexual nature, sexual harassment, and any
24 misconduct of a sexual nature that is in violation of the
25 postsecondary educational institution's policies or has been
26 determined to constitute sex discrimination pursuant to state or
27 federal law.

28 ~~((6))~~ (7) "Student" means a person enrolled at a postsecondary
29 educational institution and for whom educational records are
30 maintained.

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

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

36 (a) Declaring whether the applicant is the subject of any
37 substantiated findings of sexual misconduct in any current or former
38 employment or by any association, is currently being investigated
39 for, or has left a position during an investigation into, a violation

1 of any sexual misconduct policy at the applicant's current and past
2 employers, or is currently being investigated for, or has resigned
3 membership during an investigation into, a violation of any sexual
4 misconduct policy by any association and, if so, an explanation of
5 the situation;

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

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

16 (2) Beginning July 1, 2021, prior to an official offer of
17 employment to an applicant, a postsecondary educational institution
18 shall:

19 (a) Request in writing, electronic or otherwise, that the
20 applicant's current and past postsecondary educational institution
21 employers or relevant associations provide the information, if any,
22 described in subsection (1)(b) of this section. The request must
23 include a copy of the declaration and statement signed by the
24 applicant under subsection (1) of this section; and

25 (b) Ask the applicant if the applicant is the subject of any
26 substantiated findings of sexual misconduct, or is currently being
27 investigated for, or has left a position during an investigation
28 into, a violation of any sexual misconduct policy at the applicant's
29 current and past employers, or is currently being investigated for,
30 or has resigned membership during an investigation into, a violation
31 of any sexual misconduct policy by any association and, if so, an
32 explanation of the situation.

33 (3)(a) Pursuant to (c) of this subsection, after receiving a
34 request under subsection (2)(a) of this section, a postsecondary
35 educational institution shall provide the information requested and
36 make available to the requesting institution copies of documents in
37 the applicant's personnel record relating to substantiated findings
38 of sexual misconduct.

39 (b) Pursuant to (c) of this subsection, if a postsecondary
40 educational institution has information about substantiated findings

1 of a current or former employee's sexual misconduct in the employee's
2 personnel file or employment records, unless otherwise prohibited by
3 law, the institution shall disclose that information to any employer
4 conducting reference or background checks on the current or former
5 employee for the purposes of potential employment, even if the
6 employer conducting the reference or background check does not
7 specifically ask for such information.

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

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

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

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

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

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

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

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

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

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

--- **END** ---