

Kansas intern confidentiality rule: What happens in a lawmaker's office stays there

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TOPEKA

Intern confidentiality agreement: 'What do they have to hide?'

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The document came to light through an open records request by The Star as the Legislature tackles concerns about transparency, sexual harassment and the treatment of interns. **Hunter Woodall and Leah Becerra** The Kansas City Star

Interns in the Kansas Statehouse are required to sign a sweeping confidentiality agreement that employment law attorneys warn could have a chilling effect on their willingness to report harassment or illegal activity.

Anything that takes place or is said in a lawmaker's office stays there, the document says, under threat of immediate termination.

Sneha Verma, 18, thought it seemed sketchy when she was asked to sign the three-paragraph agreement as part of her internship in the Kansas Legislature last year.

"It made me feel like there was like some very dark politics," Verma said.

Caroline Cundiff, who also interned in the Legislature during the 2017 session, said having interns sign a confidentiality agreement "seems very

questionable.”

“Just among all the scandals that have broken out and things like that, I don’t see the need to have interns sign a confidentiality agreement just for the offices,” Cundiff said.

The confidentiality agreement came to light through an open records request by The Kansas City Star as the Legislature tackles concerns about transparency, sexual harassment and the treatment of interns.

Employment law experts who reviewed the document at The Star’s request criticized it as a potential shield to discourage student interns from reporting sexual harassment. They also said it might violate the First Amendment.

“What do they have to hide?” asked Kelly McCambridge, an employment law attorney in the Kansas City area. “Seems they are more interested in protecting the reputations of their politicians than they are in protecting the safety of their student interns.”

Behavior toward interns in the Capitol became a focal point in state politics last fall after [a former Democratic staffer revealed](#) that during the 2016 session, female interns had been asked to serve as designated drivers for male lawmakers who had been drinking.

The Star also revealed that legislative interns and other young women in the Kansas Capitol [have faced sexual advances and lewd comments](#) from lawmakers of both parties.

Legislative leaders condemned harassment, and Senate President Susan Wagle, a Wichita Republican, brought in the Women’s Foundation to recommend policy changes.

Those recommendations, released last month, include allowing victims to

anonymously report allegations and creating a non-fraternization policy for interns, legislative staff, elected officials and lobbyists.

Earlier this month, lawmakers went through sexual harassment training. Officials said interns also had a similar seminar.

Wagle, who has served in the Legislature for more than 20 years, said she was unaware of the confidentiality agreement when The Star showed her the document recently.

She said after reading it that she thought it applied to political conversations and that there was no intent to protect sexual harassers at the Capitol.

But Wagle acknowledged: “I could see where you would want it to be more narrowly drafted.”

“I think that maybe someone was trying to help people understand that communication in offices is confidential,” she said. “And it could have been written in a better way. And I’m sure it will be written with more complete language in the future, with more distinct clarity.”

KANSAS LEGISLATIVE INTERN PROGRAM INTERN CONFIDENTIALITY AGREEMENT

Internships are intended to be an educational experience for students of politics and government. Students in the Kansas Legislative Intern Program will be working with legislators, constituents, and employees of the Legislature. Legislative Interns are expected to maintain confidentiality of office conversations and activities within the various legislative offices. What takes place or what is said in any given office stays there, as legislators rely on your help with their legislative duties. It is essential that the confidentiality of any such information be maintained.

Any breach of this confidentiality agreement will constitute immediate termination and permanent disqualification from the Kansas Legislative Intern Program.

I have read and understand the foregoing statement on confidentiality. I hereby agree to maintain the confidential status of all documents and information of legislators, constituents and employees of the Legislature.

Kansas Legislative Intern (print name)

Signature

Date

Spotty records

The Star requested fifteen years worth of codes of conduct, rules, dress code materials and any other documents about expected behavior given to interns in the Kansas Legislature.

The Star made the request to Speaker Pro Tem Scott Schwab, an Olathe Republican whose office plays a key role in administering the legislative internship program.

Schwab, who is running for secretary of state, initially rejected The Star's open records request in December.

After contact with The Star's attorney, Schwab agreed to turn over information more than a month after the initial requests. But the information he provided was spotty and did not fulfill the entirety of The Star's requests.

Schwab's office did not provide any documents from the Statehouse's internship programs from 2009, 2010 and 2012. The only document provided from 2011 was a brief intern explainer.

The missing documents make it impossible to know exactly when or why the policies changed to require the confidentiality agreement and other terms, conditions and rules — including a dress code.

A thorough explanation of the Statehouse's sexual harassment policy does not appear until the 2018 intern handbook, months after The Star's reporting on the treatment of interns.

In the documents provided to The Star, the 2018 handbook is the first time that interns are told in writing that harassment "complaints will be investigated and handled as discreetly as possible and in accordance with legal obligations."

The 2018 handbook also outlines an intern harassment reporting policy and includes a slightly expanded section about inappropriate behavior.

The addition of that language to the 2018 handbook reflects a heightened awareness of harassment, Wagle said.

"Well, you know, we just realized after reading newspaper accounts of harassment in the Capitol that everything needed to be updated," she said. "So that's how this evolved."

Schwab's office was unable to answer questions about when interns were first asked to sign a confidentiality agreement or whose idea it was.

"We do not know the date or reasoning such measures were created or implemented," his office said in a statement.

Among the documents Schwab's office gave to The Star were applications for legislative sessions and terms and conditions, as well as the confidentiality agreement. Both documents must be signed and dated.

"What takes place or what is said in any given office stays there, as legislators rely on your help with their legislative duties," the confidentiality agreement says. "It is essential that the confidentiality of any such information be maintained.

"Any breach of this confidentiality agreement will constitute immediate termination and permanent disqualification from the Kansas Legislative Intern Program."

The terms and conditions document instructs interns to comply with Legislative Coordinating Council policies, including the sexual harassment policy. That policy says "sexual harassment of any legislative employee will not be tolerated."

The terms and conditions also require interns to agree "that your work, as well as office conversations and activities within the legislative office, will remain confidential."

Schwab's office defended the confidentiality agreement after questions from The Star.

"The intern confidentiality agreement is similar to a non-disclosure agreement in which official, policy-related discussions or documents exchanged between a legislator and an intern remain confidential within the respective legislative office," Schwab's office said in a statement. "Other Legislative staff members are subject to confidentiality obligations through provisions of law, Legislative Coordinating Council Policies, agency directives and policies, and position requirements."

Burdett Loomis, who has run the University of Kansas' legislative intern program in Topeka for more than 30 years, remembers that legislative leadership overhauled the internship program sometime around 2009 or 2010.

“From my understanding from talking to people in the pro tem’s office, it was just formalizing the idea that you should not be taking information out of the office conversations you’ve had with your member or whatever that he or she would assume to be private and discussing those,” Loomis said.

He said he wasn’t aware of any particular incident that led legislative leaders to make the changes.

“I don’t think it had anything at all to do directly with sexual harassment,” Loomis said.

“Certainly they took with increasing seriousness that legislators should be informed about what was appropriate for legislators to do with interns: Be part of the educational experience, give them real work to do, don’t keep them locked in the office doing some survey of the constituents. And by in large legislators have been very good about giving interns a good experience.”

Loomis added that he’s never received any specific complaint of sexual harassment from statehouse interns.

“I know the social scientist in me is saying this is nuts: You’ve got 50 interns a year, half of them women in a male-dominated institution and we know there’s harassment at every level in every institution. So, no, that’s crazy,” Loomis said.

“I believe it has happened over the years, but has it been gross and blatant? No,” he said.

‘Staggeringly broad’

Attorneys who reviewed the confidentiality agreement at The Star’s request had concerns that it could discourage interns from reporting misconduct or even crimes they witness.

The confidentiality agreement should state that it does not apply to the reporting of harassment or illegal activity, Overland Park employment attorney Joe Colantuono said in an email.

“An intern, who by definition may not be a sophisticated and experienced reviewer of contracts, is faced with a conflict because the confidentiality agreement clearly discourages disclosure of comments and events,” Colantuono said.

Ronald W. Nelson, an Overland Park attorney, called the confidentiality agreement “staggeringly broad.”

“It does not say anything about sexual harassment or inappropriate behavior being excluded from its terms, which it should,” Nelson said.

The confidentiality agreement may even run afoul of the First Amendment, said Merrick Rossein, a national expert on sexual harassment policy and professor at the City University of New York School of Law.

“Is the Legislature entitled to have confidence in what’s going on between interns and legislators and staff? Yes, I think so, in terms of legislative activity,” Rossein said. “But in terms of violations of state and federal employment discrimination laws? No, I don’t think that they are able to maintain that confidentiality.”

The updated 2018 intern handbook specifically informs interns on how to report sexual harassment. Before that, documents show that starting in 2014

interns were told in writing what to do in cases of inappropriate behavior.

If at any time an intern felt uncomfortable or threatened, they were told to contact their intern coordinators immediately, according to the documents from 2014 and on.

“But are they also saying, you can’t tell anybody else, other than reporting it through their own process?” Rossein said. “If they are, that’s a violation of the First Amendment.”

Daniel Shafton, a University of Kansas student who interned during the 2017 session, said when he first signed the agreement he didn’t foresee it as being problematic.

“What’s disappointing is, now in retrospect, reading about all of these issues pertaining to sexual harassment or just lack of transparency,” he said. “I now look at this contract and view it as, ‘Wow, this could be potentially very limiting for something that could be potentially very problematic.’ ”

In Missouri, where former House Speaker John Diehl resigned in 2015 after [admitting to exchanging sexually charged texts](#) with a 19-year-old intern, the Legislative Intern Handbook states: “Sensitive matters are often discussed by legislators and other staff in the presence of interns. This is a sign of trust. No intern shall ever divulge confidential information for any reason. There are no exceptions.”

Prospective interns in Missouri are required to sign a form that lays out responsibilities and expectations for interns, including that they “should expect to be held accountable for demonstrating a professional approach in the performance of my responsibilities, including areas of conduct, behavior, confidentiality, demeanor, and appearance ... or shall be dismissed from the intern program.”

Confidentiality almost always benefits the harasser, said McCambridge, the Kansas City area employment attorney.

It would be easy to make clear in the contract that confidentiality does not apply to reports of discrimination, sexual harassment and retaliation for reporting discrimination or for whistleblowing, McCambridge said in an email.

Kansas' intern confidentiality agreement does not make such allowances.

McCambridge said the document could be used as a shield to discourage student interns from reporting sexual harassment "and a sword in order to shut down or silence a student intern that has come forward with a complaint of sexual harassment."

Nelson, the Overland Park attorney, said the students "are vulnerable, wide-eyed enthusiasts."

State officials "are dealing with teenagers and acting as if they are addressing lawyers," he said in an email.

Officials apparently haven't paid enough attention to amend the confidentiality agreement to reflect changing policies, laws or mores, Nelson said.

"It's offensive," he said. "These people are supposed to be the leaders of the state of Kansas. They come off as anything but that."

Tom Day, director of Legislative Administrative Services in the Kansas Statehouse, said he was not aware of the intern confidentiality agreement until a Star reporter showed the document to him.

But he defended the need for interns to sign it.

“If this is the first time they’ve ever interned like that ... they wouldn’t be aware that they need to keep things confidential, of things that they hear,” he said.

Day said he’s not aware of any requirement for full-time legislative staffers to sign a confidentiality agreement as interns do, although temporary staff or office assistants are told that things are “very confidential in their offices and it’s not to go outside of the office, whatever they hear.”

Day’s office is responsible for investigating sexual harassment complaints in the Statehouse. He said he hasn’t heard of a legislative intern ever reporting harassment.

“Never,” he said.

The Star’s Jason Hancock contributed to this report.

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