

THE HEALTHY WORKPLACE BILL

An Act Addressing Workplace Bullying, Mobbing, and Harassment, Without Regard to Protected Class Status

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SECTION 1.

(a) The Legislature finds that:

(1) The social and economic well-being of the State is dependent upon healthy and productive employees;

(2) Approximately a third of all employees will directly experience health-endangering workplace bullying, abuse, and harassment during their working lives;

(3) Workplace bullying, mobbing, and harassment can inflict serious harm upon targeted employees, including, among other things, feelings of shame and humiliation, severe anxiety, depression, suicidal ideation, impaired immune systems, hypertension, increased risk of cardiovascular disease, and symptoms consistent with post-traumatic stress disorder;

(4) Abusive work environments can have serious consequences for employers, including reduced employee productivity and morale, higher turnover and absenteeism rates, and increases in medical and workers' compensation claims;

(5) If employees who have been subjected to abusive treatment at work cannot establish that the behavior was motivated by race, color, sex, sexual orientation, national origin, or age, then they are unlikely to enjoy legal protection against such mistreatment;

(6) Legal protection from abusive work environments should not be limited to behavior grounded in protected class status, as provided under employment discrimination statutes; and,

(7) Existing workers' compensation plans, occupational safety and health laws, and common-law tort actions are inadequate to discourage this behavior or to provide adequate relief to employees who have been harmed by abusive work environments.

(b) Purpose: It is the purpose of this chapter:

(1) To provide legal relief for employees who have been harmed, psychologically, physically, or economically, by deliberate exposure to abusive work environments;

(2) To provide liability-reducing legal incentives for employers to prevent and respond to abusive mistreatment of employees at work.

SECTION 2. For the purposes of this chapter, the following words and phrases shall have the following meanings:

(a) “Abusive conduct”: intentional acts, omissions, or both, that a reasonable person would find abusive, based on the severity, nature, and frequency of the conduct, including, but not limited to: repeated verbal abuse such as derogatory remarks, insults, and epithets; verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature; or the sabotage or deliberate undermining of an employee’s work performance. It shall be considered an aggravating factor if the conduct exploited an employee’s known psychological or physical illness or disability. A single act normally shall not constitute abusive conduct, but an especially severe and egregious act may meet this standard. Online communications shall be included in determining whether abusive conduct has occurred;

(b) “Abusive work environment”: when an employer or one or more its employees, subjects an employee to abusive conduct that causes physical harm, psychological harm, or both;

(c) “Adverse employment action”: an outcome that negatively impacts an employee, including but not limited to a termination, demotion, unfavorable reassignment, failure to promote, disciplinary action, or reduction in compensation.

(d) “Constructive discharge”: an adverse employment action where: (1) the employee reasonably believed they were subjected to an abusive work environment; (2) the employee resigned because of that conduct; and (3) the employer was aware of the abusive conduct prior to the resignation and failed to stop it.

(e) “Psychological harm”: the impairment of a person’s mental health, as established by competent evidence.

(f) “Physical harm”: the impairment of a person’s physical health or bodily integrity, as established by competent evidence.

SECTION 3.

- (a) No employee shall be subjected to an abusive work environment.
- (b) No employer or employee shall retaliate in any manner against an employee who has opposed any unlawful employment practice under this chapter, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings, and legal actions.

SECTION 4.

- (a) An employer shall be vicariously liable for a violation of Section 3 of this chapter committed by its employee.
- (b) Where the alleged violation of Section 3 does not include an adverse employment action, it shall be an affirmative defense for an employer only that:

- (1) the employer exercised reasonable care to prevent and correct promptly any actionable behavior; and,

- (2) the complainant employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer.

SECTION 5.

- (a) An employee may be individually liable for a violation of Section 3 of this chapter.
- (b) It shall be an affirmative defense for an employee only that the employee committed a violation of said Section 3 at the direction of the employer, under actual or implied threat of an adverse employment action.

SECTION 6.

It shall be an affirmative defense that:

- (a) The complaint is based on an adverse employment action reasonably made for poor performance, misconduct, or economic necessity; or,
- (b) The complaint is based on a reasonable performance evaluation; or,
- (c) The complaint is based on an employer's reasonable investigation about potentially illegal or unethical activity.

SECTION 7.

- (a) Where a party is liable for a violation of Section 3 of this chapter, the court may enjoin the defendant from engaging in the unlawful employment practice and may order any other relief that is deemed appropriate, including, but not limited to: reinstatement, removal of the offending party from the complainant's work environment, back pay, front pay, medical expenses, compensation for pain and suffering, compensation for emotional distress, punitive damages, and attorney's fees.
- (b) Where a party is liable for a violation of Section 3 that did not include an adverse employment action, punitive damages may be awarded only when the actionable conduct was extreme and outrageous.

SECTION 8.

- (a) This chapter shall be enforced solely by a private right of action.
- (b) An action under this chapter must be commenced no later than one year after the last act that constitutes the alleged violation of Section 3 of this chapter.

SECTION 9.

- (a) Nothing in this chapter shall supersede rights and obligations provided under collective bargaining laws and regulations.
- (b) The remedies provided in this chapter shall be in addition to any remedies provided under any other law, and nothing in this chapter shall relieve any person from any liability, duty, penalty or punishment provided by any other law, except that if an employee receives workers' compensation for medical costs for the same injury or illness pursuant to both this chapter and the workers' compensation law, or compensation under both this chapter and that law in cash payments for the same period of time not working as a result of the compensable injury or illness or the unlawful employment practice, the payments of workers' compensation shall be reimbursed from compensation paid under this chapter.

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