

WORKPLACE BULLYING ACCOUNTABILITY ACT

An Act Creating an Employer's Duty of Care to Safeguard Its Employees from Workplace Bullying

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SECTION 1. LEGISLATIVE FINDINGS AND PURPOSE.

(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 during their working lives;

(3) Workplace bullying can negatively affect an employee's mental and physical health and inflict serious harm, including, among other things, feelings of shame and humiliation, severe anxiety, depression, suicidal ideation, impaired immune systems, hypertension, increased risk of cardiovascular disease, and post-traumatic stress disorder;

(4) Workplace bullying can have serious consequences for employers, including reduced employee productivity and morale, greater levels of fear and distrust, higher turnover and absenteeism rates, and increased demands on employee benefit programs, including health care coverage;

(5) If employees who have been subjected to workplace bullying cannot establish that the behavior was motivated by protected class membership status such as race, color, sex, sexual orientation, national origin, disability, or age, or retaliation for engaging in protected whistleblowing, then they are unlikely to enjoy legal protection against such abuse;

(6) Legal protection from abusive work environments should not be limited to behavior grounded in protected class status; and,

(7) Existing workers' compensation plans, occupational safety and health laws, and

common-law tort actions are inadequate to discourage workplace bullying or to provide relief to employees who have been harmed by workplace bullying.

(b) Legislative Purpose: It is the purpose of this chapter to create an enforceable duty of care for employers to engage in reasonable preventive and responsive actions to safeguard employees from workplace bullying and to abstain from retaliating against employees who act pursuant to their contractual rights under this chapter.

SECTION 2. DEFINITIONS.

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

(b) “Abusive work environment”: acts, omissions, or both, that a reasonable person would find constitutes an abusive work environment, based on the severity, nature, and frequency of the conduct, including, but not limited to: repeated verbal abuse such as targeted derogatory remarks, insults, epithets, or ridicule; verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature; defamatory statements that undermine an employee’s vocational and personal reputation; the sabotage or deliberate undermining of an employee’s work performance; and orchestrated patterns of ostracism.

- (1) A single act normally shall not constitute an abusive work environment, but an especially severe and egregious act may meet this standard.
- (2) Pertinent online communications and off-site conduct between employees shall be included in determining whether an abusive work environment exists.
- (3) Conduct that exploits an employee’s known psychological or physical illness or disability shall be considered an aggravating factor in determining whether an abusive work environment exists.
- (4) An adverse employment action as defined in Section 2(c) and associated with behaviors defined in this section shall be considered an aggravating factor in determining whether an abusive work environment exists.

(c) “Adverse employment action”: an outcome that negatively impacts an employee, including but not limited to, termination, constructive discharge, suspension, or reduction in compensation.

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

(e) “Retaliation”: retaliatory acts or omissions, by way of an adverse employment action or other material response that would dissuade a reasonable person from exercising their rights

under this chapter, directed at an employee because they opposed any employment practice under this chapter, or made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

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

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

SECTION 3. DUTY TO SAFEGUARD FROM WORKPLACE BULLYING.

(a) An employer has a duty of care to safeguard each of its employees from workplace bullying.

(b) An employer fulfills its duty of care under Section 3 (a) by engaging in reasonable preventive and responsive measures concerning workplace bullying.

(1) Reasonable preventive measures include:

- (i) Establishing policies and procedures for preventing, reporting, and responding to workplace bullying;
- (ii) Disseminating to all employees a policy that includes, at minimum, a definition of workplace bullying consistent with this chapter, notification of the contractual rights conferred by this chapter, and procedures for reporting workplace bullying; and,
- (iii) On an annual basis, conducting employee training and education about workplace bullying.

(2) Reasonable responsive measures include:

- (i) Conducting good faith investigations in response to reports and claims of workplace bullying;
- (ii) Complying with the employer’s own policies and procedures concerning workplace bullying;
- (iii) Offering remedial measures to an employee subjected to workplace bullying, which may include, but are not limited to, stopping the bullying behaviors, implementing reasonable preventive measures as described in Section 3(b)(1), removing responsible parties from the employee’s work environment, and providing reasonably foreseeable relief including medical care, mental health care, lost wages and benefits, and restoration or reinstatement for an adverse employment action as defined in this chapter.

(iv) Instituting remedial measures, personnel actions, and discipline for those engaging in workplace bullying, which may include, but are not limited to, coaching, counseling, removal of supervisory duties, pay reduction, transfer, suspension, demotion, and/or termination.

(c) It shall not be a violation of the duty of care under this Section when an allegation of workplace bullying is based on:

(1) an adverse employment action reasonably made for poor performance, misconduct, or business necessity;

(2) a reasonable performance evaluation; or,

(3) an employer's reasonable investigation about potentially illegal or unethical activity.

(d) An employee may bring an action in Superior Court for an employer's failure to meet its duty of care as defined in this subsection.

SECTION 4. DUTY NOT TO RETALIATE.

(a) An employer has a duty of care not to retaliate against an employee who has opposed any 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.

(b) When retaliation as defined in this chapter has occurred, an employer may attempt to mitigate its violation of duty of care by offering remedial measures to the employee, including, but not limited to, stopping the retaliatory behaviors, implementing reasonable preventive measures as described in Section 3(b)(1), removing responsible parties from an employee's work environment, and providing reasonably foreseeable relief including medical care, mental health care, lost wages and benefits, and restoration or reinstatement for an adverse employment action as defined in this chapter.

(c) When retaliation as defined in this chapter has occurred, an employer may attempt to mitigate its violation of duty of care by requiring appropriate remedial measures, personnel actions, and discipline for those engaging in retaliation, including, but not limited to, coaching, counseling, removal of supervisory duties, pay reduction, transfer, suspension, demotion, or termination.

(d) An employee may bring an action in Superior Court for an employer's failure to meet its duty of care as defined in this subsection.

SECTION 5. REMEDIES.

(a) When an employer is found to have failed to meet its duty of care under Section 3 of this chapter, the court may enjoin the defendant from engaging in further workplace bullying and order other relief including, as appropriate, requiring that the employer to comply with its duty of care under Section 3; and awarding relief consistent with remedial measures defined in Section 3(b)(2)(iii-iv), as well as attorney's fees.

(b) When an employer is found to have failed to meet its duty of care under Section 4 of this chapter, the court may enjoin the defendant from engaging in further retaliation and order other relief including, as appropriate, requiring that the employer comply with its duty of care under Section 4; and awarding relief consistent with remedial measures defined in Section 4(b-c), as well as attorney's fees.

(c) Where an employer is found to have failed to meet its duty of care under Section 3 or Section 4 of this chapter and attempts to mitigate its failure as defined in Section 3(b)(2)(iii-iv) and Section 4(b-c), respectively, the employee has a duty to reasonably consider the employer's offer to mitigate said breach. Reasonableness shall be determined by the severity of the breach (including the impact of the breach on the employee's physical and mental health) and the corresponding timing and remedial sufficiency of the employer's offer. It further shall be a rebuttable presumption that an employee is acting reasonably by refusing to work under the supervision of any co-employee who engaged in the behaviors violative of this chapter.

SECTION 6. TIME LIMITATIONS.

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 or Section 4 of this chapter.

SECTION 7. PRESERVATION OF RIGHTS

Nothing in this chapter shall supersede rights and obligations provided under other federal, state, and local laws, including, but not limited to, those addressing employment discrimination, occupational safety and health, workers' compensation, and collective bargaining.

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