

***Fact Sheet (v.2)***

**WORKPLACE BULLYING ACCOUNTABILITY ACT**

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

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The Workplace Bullying Accountability Act (WBAA) is a newly drafted statutory proposal that creates a legally enforceable duty of care for employers to safeguard its employees from workplace bullying. This duty may be fulfilled by engaging in reasonable preventive and responsive measures towards bullying behaviors. When an employer fails to fulfill its duty, an employee who experiences workplace bullying may pursue a civil legal claim.

**Why the WBAA?**

The WBAA may be considered an alternative to the Healthy Workplace Bill (HWB), a model legislative bill that I initially drafted in 2003. The HWB creates a civil legal claim for severe workplace bullying and includes liability-reducing incentives for employers to prevent and respond to bullying behaviors.

During the past two decades, the HWB has been introduced in some 30 state legislatures and has attracted hundreds of legislative sponsors. It has also been the basis of enacted bills, ordinances, and policies that require employers to educate their employees and develop internal procedures about workplace bullying. However, as of 2024, the HWB has not been enacted in its full form. Thus, during the past year, I have:

- Evaluated the practical challenges faced in efforts to enact the HWB;
- Weighed criticisms of the HWB from both employer interests and employee advocates;
- Revisited options for crafting legal interventions in response to workplace bullying; and,
- Consulted with employment attorneys familiar with workplace bullying, including sharing drafts of a new bill.

The result is the Workplace Bullying Accountability Act, which addresses workplace bullying in a manner different than the HWB. Whereas the HWB creates a statutory tort type of legal action for bullied employees that uses the threat of litigation to encourage employers to safeguard their employees from workplace bullying, the WBAA creates an affirmative duty of care for employers to prevent and respond to bullying behaviors and permits a civil claim for a bullied

employee when an employer fails to fulfill that duty. While both bills provide an employee with an option to pursue legal action, the WBAA emphasizes prevention and prompt internal resolution of reports about workplace bullying.

### **Main Features of the WBAA**

- 1. Duty of Care** — The Workplace Bullying Accountability Act (WBAA) creates a duty of care for employers to safeguard their employees from workplace bullying. Employers fulfill their duty by taking reasonable measures to prevent and respond to workplace bullying.
- 2. Definition** — The WBAA uses a definition of workplace bullying built around the concept of an abusive work environment. It is modeled after the U.S. Supreme Court's definition of a hostile work environment as applied to sexual harassment. However, the WBAA definition protects all employees from severe, generic workplace abuse, rather than being limited to mistreatment based on sex or another protected class status.
- 3. Duty to prevent** — Employers can meet their preventive duty of care by creating workplace anti-bullying policies and procedures for reporting, as well as engaging in annual employee education. Most employers can seamlessly integrate these elements into current HR practices concerning sexual harassment.
- 4. Duty to respond** — Employers can meet their responsive duty of care by following their policies and procedures, providing relief for workers who have been subjected to bullying, and instituting remedial and disciplinary measures for employees who engage in bullying. When an employer offers relief to a bullied employee, that employee has a duty to reasonably evaluate the adequacy of the response.
- 5. Legal claim** — When the employer fails to meet its duty of care, an employee may file a lawsuit for failure to fulfill that duty, with potential remedies resembling standard contract damages.
- 6. Retaliation** — The WBAA also creates a duty to refrain from retaliating against employees protected by this statute, a failure of which may serve as the basis of an independent legal claim.
- 7. Primary goal of prevention and internal resolution** — The WBAA is designed to encourage prevention and prompt internal resolution, with litigation as a last resort. While some might understandably favor workplace anti-bullying bills that open multiple avenues for aggressive litigation seeking significant damages, the WBAA implicitly recognizes that employment lawsuits delivering huge settlements and verdicts are very rare, even when large awards are legally possible. In addition, these lawsuits can go on for years, often proving to be a stressful and even traumatic experience for everyone, regardless of the results.

**8. Friendly to human resources policies and collective bargaining agreements** — The WBAA is both HR and CBA friendly, in that it is designed to fit comfortably with current HR policies and can be integrated easily into CBA grievance and arbitration procedures.

**9. Designed to be introduced in state legislatures** — The WBAA is designed to be introduced in state legislatures, but it can be adapted to virtually any jurisdiction.

### **Comparing the WBAA to the HWB**

By placing an affirmative duty on employers, the Workplace Bullying Accountability Act is designed to encourage prevention of workplace bullying and prompt responses to reports of bullying behaviors by those in the best position to do so. In addition, the WBAA attempts to respond to some of the consistent criticisms of the Healthy Workplace Bill lodged by employer interests and employee advocates.

**1. Recognizing employer criticisms of HWB** -- The WBAA responds to employer-side criticisms of the HWB in two significant ways. First, the WBAA identifies specific preventive and responsive measures that employers can take to fulfill their duty of care and thus avoid liability. Second, by grounding potential relief in remedies drawn from contract law, the WBAA takes emotional distress and punitive damages off the table.

**2. Recognizing employee advocates' criticisms of HWB** — The WBAA responds to advocates' criticisms in three ways: First, unlike the HWB, the WBAA removes the requirement of showing of intent to establish the existence of an abusive work environment. Second, in contrast to the HWB, the WBAA expressly requires policies, procedures, and training by including them in an employer's duty of care. Third, when bullying has occurred, providing relief to bullied employees is a part of fulfilling that duty of care.

**3. Duty and Prevention vs. Tort and Litigation** — The WBAA imposes a duty upon employers to prevent and respond to workplace bullying. It does so very directly, by specifying the actions that employers can take to fulfill their duty of care. When an employer fails to fulfill its duty of care, an employee has a right to pursue remedies via a civil legal action.

By contrast, the HWB is more litigation oriented. It creates the right to bring a civil legal action for severe workplace bullying, with standard tort remedies for successful claims. An employer's incentive to prevent and respond to workplace bullying comes by way of an affirmative defense that allows employers to insulate themselves from liability by taking preventive and responsive measures.

By taking an approach that emphasizes prevention and response, the WBAA addresses both employer and employee interests, while encouraging the prompt and fair internal resolution of bullying situations in ways that minimize expensive and stressful litigation.

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