
SENATE BILL 5789

State of Washington

62nd Legislature

2011 Regular Session

By Senators Harper, Murray, Shin, McAuliffe, Hatfield, Pridemore, Nelson, Ranker, Conway, Kohl-Welles, and Kline

Read first time 02/14/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to addressing workplace bullying by making it an
2 unfair practice to subject an employee to an abusive work environment;
3 adding a new section to chapter 49.60 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds and declares that:

6 (a) The social and economic well-being of the state is dependent
7 upon healthy and productive employees;

8 (b) Surveys and studies have documented that: Approximately one in
9 five employees directly experience health-endangering workplace
10 bullying, abuse, and harassment; and abusive work environments can have
11 serious effects on targeted employees and serious consequences for
12 employers; and

13 (c) Unless mistreated employees have been subjected to abusive
14 treatment at work for unlawful discriminatory reasons, they are
15 unlikely to have legal recourse.

16 (2) For these reasons, the legislature intends:

17 (a) To provide legal recourse for employees who have been harmed,
18 psychologically, physically, or economically, by being deliberately
19 subjected to abusive work environments; and

1 (b) To provide legal incentives for employers to prevent and
2 respond to mistreatment of employees at work.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.60 RCW
4 to read as follows:

5 (1) It is an unfair practice to subject an employee to an abusive
6 work environment.

7 (2) It is an affirmative defense to an action for an abusive work
8 environment that:

9 (a) The employer exercised reasonable care to prevent and promptly
10 correct the abusive conduct and the aggrieved employee unreasonably
11 failed to take advantage of appropriate preventive or corrective
12 opportunities provided by the employer. The employer may demonstrate
13 reasonable care by adopting employment policies prohibiting abusive
14 conduct and establishing effective enforcement procedures. This
15 defense is not available when the abusive conduct culminates in a
16 negative employment decision; or

17 (b) The complaint is grounded primarily upon a negative employment
18 decision made consistent with an employer's legitimate business
19 interests, such as a termination or demotion based on an employee's
20 poor performance, or the complaint is grounded primarily upon an
21 employer's reasonable investigation of potentially illegal or unethical
22 activity.

23 (3) For purposes of this section:

24 (a) "Abusive conduct" is conduct of an employer or employee in the
25 workplace, with malice, that a reasonable person would find hostile,
26 offensive, and unrelated to an employer's legitimate business
27 interests. In considering whether abusive conduct is present, a trier
28 of fact should weigh the severity, nature, and frequency of the
29 conduct. Abusive conduct may include, but is not limited to, repeated
30 infliction of verbal abuse such as the use of derogatory remarks,
31 insults, and epithets; verbal or physical conduct that a reasonable
32 person would find threatening, intimidating, or humiliating; or the
33 gratuitous sabotage or undermining of a person's work performance. A
34 single act normally will not constitute abusive conduct, unless
35 especially severe and egregious.

36 (b) "Abusive work environment" is a workplace where an employee is

1 subjected to abusive conduct that is so severe that it causes physical
2 or psychological harm to the employee.

3 (c) "Constructive discharge" is abusive conduct: (i) Which causes
4 the employee to resign; (ii) where, prior to resigning, the employee
5 brings to the employer's attention the existence of the abusive
6 conduct; and (iii) which the employer fails to take reasonable steps to
7 eliminate.

8 (d) "Malice" is the desire to see another person suffer
9 psychological, physical, or economic harm, without legitimate cause or
10 justification. Malice may be inferred from the presence of factors
11 such as outward expressions of hostility, harmful conduct inconsistent
12 with an employer's legitimate business interests, a continuation of
13 harmful, illegitimate conduct after the complainant requests that it
14 cease or demonstrates outward signs of emotional or physical distress
15 in the face of the conduct, or attempts to exploit the complainant's
16 known psychological or physical vulnerability.

17 (e) "Negative employment decision" is a termination, constructive
18 discharge, demotion, unfavorable reassignment, refusal to promote, or
19 disciplinary action.

20 (f) "Physical harm" is the material impairment of a person's
21 physical health or bodily integrity, as documented by a competent
22 physician or supported by competent expert evidence at trial.

23 (g) "Psychological harm" is the material impairment of a person's
24 mental health, as documented by a competent psychologist, psychiatrist,
25 or psychotherapist, or supported by competent expert evidence at trial.

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