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**SENATE BILL 6435**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Cleveland, Keiser, Kuderer, and Saldaña

AN ACT Relating to establishing healthy workplaces; and adding a new chapter to Title 49 RCW.

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

NEW SECTION. **Sec.**  (1) The legislature finds that the social and economic well-being of the state is dependent upon healthy and productive employees. At least one-third of all employees directly experience health endangering workplace bullying, abuse, and harassment during their working lives. This form of mistreatment is four times more prevalent than sexual harassment alone. Workplace bullying, mobbing, and harassment can inflict serious harm upon targeted employees, including feelings of shame and humiliation, severe anxiety, depression, suicidal tendencies, impaired immune systems, hypertension, increased risk of cardiovascular disease, and symptoms consistent with posttraumatic stress disorder.

(2) The legislature also finds that abusive work environments can have serious consequences for employers, including reduced employee productivity and morale, higher turnover and absenteeism rates, and significant increases in medical and workers' compensation claims.

(3) The legislature further finds that if mistreated employees who have been subjected to abusive treatment in the workplace cannot establish that the behavior was motivated by an unfair practice, as prohibited in the law against discrimination under RCW 49.60.180, such employees are unlikely to be protected by the law against such mistreatment.

(4) The legislature declares that legal protection from abusive work environments should not be limited to behavior grounded in a protected class status as required by the law against discrimination statutes. Existing workers' compensation provisions and common law tort law are inadequate to discourage such mistreatment or to provide adequate redress to employees who have been harmed by abusive work environments.

(5) The purpose of this chapter is to provide legal redress for employees who have been harmed psychologically, physically, or economically by deliberate exposure to abusive work environments; and to provide legal incentives for employers to prevent and respond to abusive mistreatment of employees at work.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Abusive work environment" means a workplace where an employee is subjected to abusive conduct that is so severe that it causes physical or psychological harm to the employee.

(3) "Constructive discharge" means abusive conduct: (a) That causes the employee to resign; (b) before resigning, the employee brings to the employer's attention the existence of the abusive conduct; and (c) the employer fails to take reasonable steps to eliminate the conduct.

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

(5) "Negative employment decision" means a termination, constructive discharge, demotion, unfavorable reassignment, refusal to promote, or disciplinary action.

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

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

NEW SECTION. **Sec.**  (1) No employee shall be subjected to an abusive work environment.

(2) 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.

NEW SECTION. **Sec.**  (1) An employer is vicariously liable for a violation of section 3 of this act committed by its employee.

(2) Where the alleged violation of section 3 of this act does not include an adverse employment action, it is an affirmative defense for an employer only that:

(a) The employer exercised reasonable care to prevent and correct promptly any actionable behavior; and

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

NEW SECTION. **Sec.**  (1) An employee may be individually liable for a violation of section 3 of this act.

(2) It is an affirmative defense for an employee only that the employee committed a violation of section 3 of this act at the direction of the employer, under actual or implied threat of an adverse employment action.

NEW SECTION. **Sec.**  It is an affirmative defense to an action brought under this act that the complaint is based on:

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

(2) A reasonable performance evaluation; or

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

NEW SECTION. **Sec.**  (1) If a defendant has been found liable for a violation of section 3 of this act, 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 plaintiff's work environment, reimbursement for lost wages, front pay, medical expenses, compensation for pain and suffering, compensation for emotional distress, punitive damages, and reasonable costs and attorneys' fees.

(2) If an employer is liable for a violation of section 3 of this act that did not include an adverse employment action, emotional distress damages and punitive damages may be awarded only when the actionable conduct was extreme and outrageous. This limitation does not apply to individually named employee defendants.

NEW SECTION. **Sec.**  (1) The provisions of this chapter are enforceable solely by means of a civil cause of action commenced by an injured employee.

(2) An action to enforce the provisions of this chapter must be commenced within one year of the last act that constitutes the alleged violation of section 3 of this act.

NEW SECTION. **Sec.**  This act does not prevent, interfere, exempt, or supersede any current provisions of an employee's existing collective bargaining agreement that provides greater rights and protections than prescribed in this chapter nor does this chapter prevent any new provisions of a collective bargaining agreement that provide greater rights and protections from being implemented and applicable to the employee within the collective bargaining agreement. If the collective bargaining agreement provides greater rights and protections than prescribed in this chapter, the recognized collective bargaining agent may opt to accept or reject to be covered by the provisions of this chapter.

NEW SECTION. **Sec.**  (1) This chapter does not exempt any person or entity from any liability, duty, or penalty provided by any other state law or rule.

(2) The remedies provided in this chapter are in addition to any remedies provided under any other provision of law, and nothing in this chapter relieves any person from any liability, duty, penalty, or punishment provided by any other provision of law, except that if an employee receives workers' compensation for medical costs for the same injury or illness under both this chapter and the workers' compensation law, or compensation under both this chapter and such 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 must be reimbursed from damages paid under this chapter.

NEW SECTION. **Sec.**  This chapter applies to abusive conduct occurring on or after the effective date of this section.

NEW SECTION. **Sec.**  Sections 1 through 11 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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