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SENATE BILL 6532

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State of Washington                      64th Legislature                      2016 Regular Session

By Senators Chase, Benton, Cleveland, Conway, Hasegawa, McCoy, Keiser, Liias, McAuliffe, Fraser, and Jayapal

Read first time 01/25/16. Referred to Committee on Commerce & Labor.

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

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

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

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

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

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

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

19           (a) To provide legal recourse for employees who have been harmed,  
20 psychologically, physically, or economically, by being deliberately  
21 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  
4 RCW 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  
10 promptly correct the abusive conduct and the aggrieved employee  
11 unreasonably failed to take advantage of appropriate preventive or  
12 corrective opportunities provided by the employer. The employer may  
13 demonstrate reasonable care by adopting employment policies  
14 prohibiting abusive conduct and establishing effective enforcement  
15 procedures. This defense is not available when the abusive conduct  
16 culminates in a negative employment decision; or

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

23 (3) For purposes of this section:

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

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

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

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

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

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

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

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