
Labor & Workplace Standards Committee

HB 2888

Brief Description: Addressing workplace bullying by making it an unfair practice to subject an employee to an abusive work environment.

Sponsors: Representatives Cody, Lovick, Stambaugh, Ryu, Goodman, Peterson, Sells, Blake, Bergquist, Gregerson, Pollet, Stonier, Valdez, Tarleton, Slatter, Jinkins, Johnson, Frame and Ormsby.

Brief Summary of Bill

- Makes it an unfair practice under the Washington Law Against Discrimination to subject an employee to an abusive work environment, which means a workplace where an employee is subjected to abusive conduct that is so severe it causes physical, psychological, or economic harm to the employee.
- Creates affirmative defenses to an action for abusive work environment.

Hearing Date: 1/29/18

Staff: Trudes Tango (786-7384).

Background:

Statute and common law prohibit certain types of harassment and conduct in the workplace.

Workers are protected from status-based discrimination by the Washington Law Against Discrimination (WLAD) and certain federal laws. These statutory protections prohibit discrimination in employment on the basis of age, sex, marital status, sexual orientation, race, creed, color, national origin, or mental or physical disability. Discriminatory acts are considered unfair practices. The Human Rights Commission (Commission) administers and enforces the WLAD. The WLAD applies to employers with eight or more employees.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Commission investigates complaints alleging unfair practices. If there is reasonable cause to believe an unfair practice is, or has been, occurring, the Commission must act to eliminate the unfair practice through conference, conciliation, and persuasion. If no agreement is reached, the Commission requests the appointment of an administrative law judge. The administrative law judge may require the employer to cease and desist and may award damages or order any other affirmative action to effectuate the purposes of the law.

Workers may also be protected from harmful conduct in the workplace under the common law tort of intentional infliction of emotional distress (IIED). To show IIED, the injured party must demonstrate emotional distress was inflicted negligently or recklessly, there was actual distress, and the conduct was outrageous and extreme. Liability exists only where the conduct has been so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency.

Summary of Bill:

The Legislature intends to provide legal recourse for employees who have been harmed, psychologically, physically, or economically, by being deliberately subjected to abusive work environments, and to provide legal incentives for employers to prevent and respond to mistreatment of employees at work.

It is an unfair practice to subject an employee to an abusive work environment. It is an affirmative defense to an action for an abusive work environment if:

- The employer exercised reasonable care to prevent and promptly correct the abusive conduct and the aggrieved employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities. The employer may demonstrate reasonable care by adopting employment policies prohibiting abusive conduct, providing educational materials, and establishing effective enforcement procedures. This defense is not available when the abusive conduct culminates in a negative employment decision; or
- The complaint is grounded primarily upon a negative employment decision made consistent with an employer's legitimate business interests, such as a termination or demotion based on poor performance or potentially illegal or unethical activity.

"Abusive conduct" means repeated conduct of an employer or employee in the workplace, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. A trier of fact should weight the severity, nature, and frequency of the conduct. Abusive conduct may include 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, humiliating, or isolating; 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.

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

Definitions for "constructive discharge", "negative employment decision", "economic harm", "physical harm" and "psychological harm" are provided.

Appropriation: None.

Fiscal Note: Requested on January 25, 2018.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.