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SENATE BILL 6622

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State of Washington                      60th Legislature                      2008 Regular Session

By Senators Franklin, Spanel, Keiser, Fairley, McAuliffe, Regala, Shin, Kohl-Welles, and Kline

Read first time 01/21/08. Referred to Committee on Labor, Commerce, Research & Development.

1            AN ACT Relating to providing legal redress for targets of workplace  
2 bullying, abuse, and harassment; adding a new chapter to Title 49 RCW;  
3 and prescribing penalties.

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 between sixteen  
9 percent and twenty-one percent of employees directly experience health-  
10 endangering workplace bullying, abuse, and harassment, and that this  
11 behavior is four times more prevalent than sexual harassment alone;

12            (c) Surveys and studies have documented that abusive work  
13 environments can have serious effects on targeted employees, including  
14 feelings of shame and humiliation, stress, loss of sleep, severe  
15 anxiety, depression, posttraumatic stress disorder, reduced immunity to  
16 infection, stress-related gastrointestinal disorders, hypertension, and  
17 pathophysiologic changes that increase the risk of cardiovascular  
18 diseases;

1 (d) Surveys and studies have documented that abusive work  
2 environments can have serious consequences for employers, including  
3 reduced employee productivity and morale, higher turnover and  
4 absenteeism rates, and significant increases in medical and workers'  
5 compensation claims;

6 (e) Unless mistreated employees have been subjected to abusive  
7 treatment at work for unlawful discriminatory reasons, they are  
8 unlikely to have legal recourse to redress such treatment;

9 (f) Legal protection from abusive work environments should not be  
10 limited to behavior grounded in protected class status such as is  
11 provided under employment discrimination statutes; and

12 (g) Existing workers' compensation plans and common law tort  
13 actions are inadequate to discourage this behavior or provide adequate  
14 redress to employees who have been harmed by abusive work environments.

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

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

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

21 NEW SECTION. **Sec. 2.** The definitions in this section apply  
22 throughout this chapter unless the context clearly requires otherwise.

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

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

1 (3) "Conduct" is all forms of behavior, including acts and  
2 omissions of acts.

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

8 (5) "Employee" means the same as in RCW 51.08.185.

9 (6) "Employer" means the same as in RCW 51.08.070.

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

19 (8) "Negative employment decision" is a termination, constructive  
20 discharge, demotion, unfavorable reassignment, refusal to promote, or  
21 disciplinary action.

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

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

28 NEW SECTION. **Sec. 3.** (1) It is an unlawful employment practice  
29 under this chapter:

30 (a) To subject an employee to an abusive work environment; or

31 (b) To retaliate in any manner against an employee because he or  
32 she has opposed any unlawful employment practice under this chapter, or  
33 because he or she has made a charge, testified, assisted, or  
34 participated in any manner in an investigation or proceeding under this  
35 chapter including, but not limited to, internal proceedings,  
36 arbitration and mediation proceedings, and legal actions.

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

3 (a) The employer exercised reasonable care to prevent and promptly  
4 correct the abusive conduct and the aggrieved employee unreasonably  
5 failed to take advantage of appropriate preventive or corrective  
6 opportunities provided by the employer. This defense is not available  
7 when the abusive conduct culminates in a negative employment decision.

8 (b) The complaint is grounded primarily upon a negative employment  
9 decision made consistent with an employer's legitimate business  
10 interests, such as a termination or demotion based on an employee's  
11 poor performance, or the complaint is grounded primarily upon an  
12 employer's reasonable investigation of potentially illegal or unethical  
13 activity.

14 (3) An employer is vicariously liable for an unlawful employment  
15 practice in violation of this chapter committed by its employee.

16 NEW SECTION. Sec. 4. (1) Where a defendant has been found to have  
17 committed an unlawful employment practice under this chapter, the court  
18 may enjoin the defendant from engaging in the unlawful employment  
19 practice and may order any other relief that is deemed appropriate  
20 including, but not limited to, reinstatement, removal of the offending  
21 party from the complainant's work environment, back pay, front pay,  
22 medical expenses, compensation for emotional distress, punitive  
23 damages, and attorneys' fees.

24 (2) Where an employer has been found to have committed an unlawful  
25 employment practice under this chapter that did not result in a  
26 negative employment decision, the employer's liability for damages for  
27 emotional distress may not exceed twenty-five thousand dollars and the  
28 employer may not be liable for punitive damages. This subsection does  
29 not apply to individually named coemployee defendants.

30 NEW SECTION. Sec. 5. (1) This chapter may be enforced solely by  
31 a private right of action.

32 (2) An action commenced under this chapter may be commenced no  
33 later than one year after the last act that comprises the alleged  
34 unlawful employment practice.

1        NEW SECTION.   **Sec. 6.**   (1) Nothing in this chapter may be deemed to  
2 exempt or relieve any person from any liability, duty, penalty, or  
3 punishment provided by any other law of this state.

4        (2) The remedies in this chapter are in addition to remedies under  
5 workers' compensation laws. However, a person who believes that he or  
6 she has been subjected to an unlawful employment practice under this  
7 chapter may elect to accept workers' compensation benefits in  
8 connection with the underlying behavior in lieu of bringing an action  
9 under this chapter. A person who elects to accept workers'  
10 compensation may not bring an action under this chapter for the same  
11 underlying behavior.

12        NEW SECTION.   **Sec. 7.**   Sections 1 through 6 of this act constitute  
13 a new chapter in Title 49 RCW.

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