
SENATE BILL 5423

State of Washington

65th Legislature

2017 Regular Session

By Senators Chase, Hasegawa, Hunt, Kuderer, and Saldaña

Read first time 01/24/17. Referred to Committee on Commerce, Labor & Sports.

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 under this chapter to subject an
6 employee to an abusive 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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