
Commerce & Labor Committee

HB 2142

Brief Description: Providing legal redress for targets of workplace bullying, abuse, and harassment.

Sponsors: Representatives Linville, Conway, Morrell, Chase, Kenney, Moeller, Santos and Ormsby.

Brief Summary of Bill

- Makes it an unlawful employment practice to subject an employee to an abusive work environment.
- Defines "abusive work environment" as a workplace where an employee is subject to severe abusive conduct that causes physical or psychological harm.
- Grants an aggrieved employee a private right of action and various remedies.

Hearing Date: 2/1/08

Staff: Jill Reinmuth (786-7134).

Background:

Workers are protected from certain types of harassment and abusive conduct in the workplace by statute and common law. Workers are protected from status-based discrimination by federal and state law. 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.

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.

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.

Legislation related to workplace bullying has been introduced in 12 other states (California, Connecticut, Hawaii, Kansas, Massachusetts, Missouri, Montana, New Jersey, New York, Oregon, Oklahoma, and Vermont), but not enacted. A few countries and a few provincial governments in other countries have laws regarding workplace bullying.

Summary of Bill:

A new chapter, which makes it an unlawful employment practice to subject an employee to an abusive work environment, is enacted. The new chapter may be enforced solely by a private right of action.

Findings and Intent

The Legislature finds that:

- the state's well-being is dependent on healthy and productive employees;
- between 16 and 21 percent of employees experience workplace bullying;
- workplace bullying is four times more prevalent than sexual harassment;
- abusive workplace environments can have serious effects on employees;
- abusive workplace environments can have serious consequences for employers;
- mistreated employees are unlikely to have legal recourse; and
- existing laws provide inadequate protection.

The Legislature intends to provide:

- legal redress for employees who have been harmed by abusive work environments; and
- legal incentives for employers to prevent and respond to mistreatment of employees at work.

Unlawful Practices

It is an unlawful employment practice to subject an employee to an abusive work environment or to retaliate against an employee because he or she opposed such a practice or participated in any investigation or proceeding related to such a practice.

An "abusive work environment" is a workplace where an employee is subject to severe abusive conduct that causes physical or psychological harm.

"Abusive conduct" is conduct of an employer or employees in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated verbal abuse, threatening, intimidating, or humiliating verbal or physical conduct, or the gratuitous sabotage or undermining of a person's work performance. In considering whether conduct is abusive, the severity, nature, and frequency of the conduct are weighed. A single act is not abusive conduct unless it is especially severe and egregious. "Malice" is the desire to see another person suffer psychological, physical, or economic harm, without legitimate cause or justification. Malice may be inferred from a variety of factors.

"Physical harm" is the material impairment of person's physical health or bodily integrity, as documented by a physician or supported by expert evidence. Similarly, "psychological harm" is the material impairment of a person's mental health, as documented by a psychologist, psychiatrist, or psychotherapist, or supported by expert evidence.

Affirmative Defenses

It is an affirmative defense that the employee 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. It is also an affirmative defense that the complaint is grounded primarily upon a negative employment decision made consistent with an employer's legitimate business interests, or an employer's reasonable investigation of potentially illegal or unethical activity.

Civil Actions and Remedies

The new chapter may be enforced solely by a private right of action. Such an action may be commenced no later than one year after the last act comprising the unlawful employment practice.

Where a defendant committed an unlawful employment practice, the court may enjoin the defendant from engaging in the practice and may order other appropriate relief. The court may order reinstatement or removal of the offending party from the complainant's work environment. The court also may order compensation for actual damages (e.g., back pay, front pay, or medical expenses), compensation for emotional distress, punitive damages, and attorneys' fees.

Where an employer committed an unlawful employment practice that did not result in a negative employment decision, compensation for emotional distress may not exceed \$25,000. Punitive damages are not allowed.

An employer is vicariously liable for an unlawful employment practice committed by its employee.

The remedies in the new chapter are in addition to remedies under workers' compensation laws. An aggrieved employee may elect to accept workers' compensation benefits in lieu of bringing an action under the new chapter.

Nothing in the new chapter exempts or relieves any person from any liability, duty, penalty, or punishment provided by any other laws.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Requested on January 26, 2008.

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