
Labor & Workforce Development Committee

HB 1928

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

Sponsors: Representatives Liias, Kenney, Sells, Moscoso, Ormsby, Van De Wege, McCoy, Takko, Cody, Green, Blake, Roberts, Rolfes, Hunt, Moeller, Darneille, Hasegawa and Stanford.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Makes it an unfair practice under the Washington Law Against Discrimination to subject an employee to an abusive work environment.
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Hearing Date: 1/20/12

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 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) is responsible for administering and enforcing the WLAD.

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

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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.

Legislation related to workplace bullying has been introduced in at least 20 other states, but not enacted. A few countries and a few provincial governments in other countries have laws regarding workplace bullying.

Summary of Bill:

Findings and Intent.

The Legislature finds that:

- the state's well-being is dependent on healthy and productive employees;
- approximately one in five employees experience workplace bullying;
- abusive workplace environments can have serious effects on employees and serious consequences for employers; and
- mistreated employees are unlikely to have legal recourse.

The Legislature intends to provide:

- legal recourse 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.

Unfair Practice.

It is an unfair practice under the Washington Law Against Discrimination to subject an employee to an abusive work environment. 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 a 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 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. It is also an affirmative defense that the complaint is grounded primarily upon a negative employment decision made consistent with the employer's legitimate business interests, or the employer's reasonable investigation of potentially illegal or unethical activity.

Appropriation: None.

Fiscal Note: Requested on January 17, 2012.

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