

SENATE BILL REPORT

SB 5789

As of January 18, 2012

Title: An act relating to addressing workplace bullying by making it an unfair practice to subject an employee to an abusive work environment.

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

Sponsors: Senators Harper, Murray, Shin, McAuliffe, Hatfield, Pridemore, Nelson, Ranker, Conway, Kohl-Welles and Kline.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/17/12.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Edith Rice (786-7444)

Background: Under the Washington Law Against Discrimination (WLAD), the state has declared that discrimination is a matter of state concern. The Human Rights Commission (HRC) was created to eliminate and prevent discrimination in a variety of settings including employment, credit and insurance transactions, real property transactions, accommodations etc. based on race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability. Individuals who believe they have been harmed in violation of the WLAD may file a complaint with the HRC. If the HRC determines that there is reasonable cause to believe that an unfair practice has been committed, the HRC will attempt to eliminate the unfair practice by conference, conciliation and persuasion. If agreement is reached through this process, it is put into writing and is subject to approval by the HRC. In the event that agreement is not reached, the matter is referred to the chair of the HRC who can request that the matter be heard by an administrative law judge (ALJ). If the ALJ finds that an unfair practice has been committed, the ALJ can order remedies which may include that the unfair practice cease, that an individual's hiring be reinstated, that there be an award of back pay and other remedies that could be ordered by a court to effectuate the purposes of the WLAD. However, under the WLAD damages for humiliation and mental suffering cannot exceed \$20,000.

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.

Summary of Bill: It is an unfair practice to subject an employee to an abusive work environment. An abusive work environment is one in which abusive conduct causes physical or psychological harm to the employee. Abusive conduct is behavior that a reasonable person would find hostile, offensive, and unrelated to the employer's legitimate business interests. Abusive conduct is conduct engaged in with malice or the desire to see another person suffer psychological, physical or economic harm, without legitimate cause. Terms used are defined. An employer has an affirmative defense against the charge of subjecting an employee to an abusive work environment in two instances. The first is if the employer exercised reasonable care to prevent and correct the abusive conduct and the employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer. However, this defense is not available if the abusive conduct culminates in a negative employment decision such as a demotion or disciplinary action. The second affirmative defense applies against such a charge if the charge is grounded primarily upon a negative employment decision (such as disciplinary action) and the negative employment decision is consistent with the employers legitimate business interests.

Appropriation: None.

Fiscal Note: Requested on January 15, 2012.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The goal is to prevent and deter future lawsuits by making it clear that abusive behavior is not acceptable. We may have stopped it in the schools but it still goes on in the workplace. This is not office politics. Employees deserve a safe work place. Bullies sabotage the workplace. Supervisors often allow bullying to continue in the work place. Sometime the supervisor is the bully. There is no other recourse for employees who are bullied. Employees can suffer from post traumatic stress disorder as the result of bullying. State agency policies currently in place do not work. This bill clarifies what the employees remedies are. It lists affirmative defenses and helps employers get to the cause of the bullying. Prevention is best. There is clearly a gap in the law and there needs to be a discussion about how best to address this issue. Healthcare workers are at the highest risk for workplace bullying, by patients, employees and employers. They should have a workplace free of violence. Agencies need to make a reasonable effort to prevent bullying as well as the tools to deal with bullying and this bill will give them that.

CON: This would put at risk business employers who are passionate about their work, set high standards for employees and ask them to be more productive. Employees already have other forms of legal action such as tort lawsuits. This would be one more way for employees to sue employers based on vague definitions and is extremely complex. State employees already can use state policies on anti-harassment. Language in this bill is ambiguous and unprecedented in its reach. This would be burdensome on the state.

Persons Testifying: PRO: Senator Harper, prime sponsor; Martha Woods, Thomas Young, Gary Namie, Elaine Bush, Seamus Walsh Petrie, WA Public Employees Assn.; Richard Reuther, Christine Reuther, Linda Kendall-Hagan, Deb Creveling, Sean Sullivan, Mario

Haynes, Rebecca Johnson, WA State Labor Council; Melissa Johnson, WA State Nursing Assn.

CON: Tim O'Connell, Assn. of WA Businesses; Gary Smith, Independent Business Assn.; Marie Clarke, Office of the Attorney General.