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**HOUSE BILL 2894**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Cody, Appleton, Ortiz-Self, Reykdal, Sells, Robinson, Gregerson, Moscoso, Tarleton, S. Hunt, and Kuderer

AN ACT Relating to addressing workplace bullying by making it an unfair practice to subject an employee to an abusive work environment; adding a new section to chapter 49.60 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds and declares that:

(a) The social and economic well-being of the state is dependent upon healthy and productive employees;

(b) Surveys and studies have documented that: Approximately one in five employees directly experience health-endangering workplace bullying, abuse, and harassment; and abusive work environments can have serious effects on targeted employees and serious consequences for employers; and

(c) Unless mistreated employees have been subjected to abusive treatment at work for unlawful discriminatory reasons, they are unlikely to have legal recourse.

(2) For these reasons, the legislature intends:

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

(1) It is an unfair practice to subject an employee to an abusive work environment.

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

(a) 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 provided by the employer. The employer may demonstrate reasonable care by adopting employment policies prohibiting abusive conduct and establishing effective enforcement procedures. This defense is not available when the abusive conduct culminates in a negative employment decision; or

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

(3) For purposes of this section:

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

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

(c) "Constructive discharge" is abusive conduct: (i) Which causes the employee to resign; (ii) where, prior to resigning, the employee brings to the employer's attention the existence of the abusive conduct; and (iii) which the employer fails to take reasonable steps to eliminate.

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

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

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

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

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