

HOUSE BILL REPORT

HB 2888

As Reported by House Committee On: Labor & Workplace Standards

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: Representatives Cody, Lovick, Stambaugh, Ryu, Goodman, Peterson, Sells, Blake, Bergquist, Gregerson, Pollet, Stonier, Valdez, Tarleton, Slatter, Jinkins, Johnson, Frame and Ormsby.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/29/18, 2/1/18 [DP].

Brief Summary of Bill

- Makes it an unfair practice under the Washington Law Against Discrimination to subject an employee to an abusive work environment, which means a workplace where an employee is subjected to abusive conduct that is so severe it causes physical, psychological, or economic harm to the employee.
- Creates affirmative defenses to an action for abusive work environment.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

Minority Report: Do not pass. Signed by 2 members: Representatives McCabe, Ranking Minority Member; Manweller.

Staff: Trudes Tango (786-7384).

Background:

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.

Statute and common law prohibit certain types of harassment and conduct in the workplace.

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) administers and enforces the WLAD. The WLAD applies to employers with eight or more employees.

The Commission investigates complaints alleging unfair practices. If there is reasonable cause to believe an unfair practice is, or has been, occurring, the Commission must act to eliminate the unfair practice through conference, conciliation, and persuasion. If no agreement is reached, the Commission requests the appointment of an administrative law judge. The administrative law judge may require the employer to cease and desist and may award damages or order any other affirmative action to effectuate the purposes of the law.

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.

Summary of Bill:

The Legislature intends to provide legal recourse for employees who have been harmed, psychologically, physically, or economically, by being deliberately subjected to abusive work environments, and to provide legal incentives for employers to prevent and respond to mistreatment of employees at work.

It is an unfair practice to subject an employee to an abusive work environment. It is an affirmative defense to an action for an abusive work environment if:

- 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. The employer may demonstrate reasonable care by adopting employment policies prohibiting abusive conduct, providing educational materials, and establishing effective enforcement procedures. This defense is not available when the abusive conduct culminates in a negative employment decision.
- 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 poor performance or potentially illegal or unethical activity.

"Abusive conduct" means repeated conduct of an employer or employee in the workplace, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. A trier of fact should weight the severity, nature, and frequency

of the conduct. Abusive conduct may include 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, humiliating, or isolating; 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.

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

Definitions for "constructive discharge," "negative employment decision," "economic harm," "physical harm" and "psychological harm" are provided.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Bullying in the workplace has significant effects on employees. It is abuse and has traumatic effects on a person's self, identity, and professional life. Washington would be the first state in the nation to protect employees from bullying. Bullying is experienced across many different professions and workplaces. The best response from employers is to make structural changes as soon as the abuse is made known to the employer. Delaying any response out of fear of litigation only increases the negative impacts. The existing legal remedies for this type of behavior are not adequate.

(Opposed) This bill does not solve the problem. It is not clear what exactly is offensive conduct. If an employer has a legitimate concern about an employee's performance and gives the employee an evaluation, that can be seen as offensive. The bill is unworkable, especially for small businesses. It would be devastating to small businesses as they try to figure out what they need to do under the bill. The current antidiscrimination statutes focus on a person's status, but this bill is about conduct. The bill is overly broad and could apply to any person interacting with an employee, including customers. There is nothing in the bill to protect the employer from frivolous complaints.

Persons Testifying: (In support) Pat Bailey, Washington Federation of State Employees; Pamela Raphael, Coalition for a Respectful Workplace; and Patricia Rose, Coalition for a Respectful Workplace.

(Opposed) Bruce Beckett, Washington Retail Association; Gary Smith, Independent Business Association; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.