

SENATE BILL REPORT

SB 5423

As of January 25, 2018

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 Chase, Hasegawa, Hunt, Kuderer and Saldaña.

Brief History:

Committee Activity: Commerce, Labor & Sports: 6/28/17.
Labor & Commerce: 1/24/18.

Brief Summary of Bill

- Creates an unfair practice under the Washington State Law Against Discrimination (WLAD) to subject an employee to an abusive work environment.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

Background: Under WLAD, a person has the right to be free from discrimination related to a protected status, such as race, national origin, sex, veteran or military status, sexual orientation, and disability. WLAD applies to employers that employ eight or more employees, but does not apply to any religious or sectarian organization not organized for private profit. The Human Rights Commission (HRC) enforces the WLAD.

Taking certain actions because of a protected status are considered unfair practices. HRC investigates complaints alleging unfair practices. If there is reasonable cause to believe an unfair practice is, or has been, occurring, HRC must act to eliminate the unfair practice

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.

through conference, conciliation, and persuasion. If no agreement is reached, HRC requests the appointment of an administrative law judge (ALJ). An ALJ is empowered to award damages, require the wrongful act cease and desist, and to order any other affirmative action to effectuate the purposes of the law.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): It is an unfair practice under WLAD to subject an employee to an abusive work environment, where the employee is subject to abusive conduct that is so severe that it causes physical, psychological, or economic harm to the employee. Abusive conduct is repeated 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. Abusive conduct may include:

- repeated infliction of verbal abuse;
- verbal or physical conduct that a reasonable person would find threatening, intimidating, humiliating, or isolating; or
- gratuitous sabotage or undermining of a person's work performance.

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, provided educational materials on maintaining a non-abusive work environment, and the employee unreasonably failed to take advantage of the appropriate preventive or corrective opportunities—this is not an affirmative defense if the abusive conduct culminated in a negative employment decision; or
- the complaint is grounded primarily upon a negative employment decision made consistent with the employer's legitimate business interests.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony (Commerce, Labor & Sports): No public hearing was held.

Persons Testifying (Commerce, Labor & Sports): N/A.

Persons Signed In To Testify But Not Testifying (Commerce, Labor & Sports): N/A.

Staff Summary of Public Testimony (Labor & Commerce): PRO: Workplace bullying is an epidemic. Abusive conduct is three to four times more prevalent than sexual harassment and it has many of the same bad effects. The United States is the only western country to not address workplace bullying. No good employer should fear the bill because there are protections in the bill and affirmative defenses. Not acting to stop the conduct prolongs it

and increases the influence of abusers. It forces workers to leave jobs and causes them financial hardship. The bill is good for business because bullying decreases productivity.

CON: The bill creates a vague standard that will create confusion for employers and increase litigation. The term vicarious liability is not defined in the bill, but it seems to mean guilt by association. The bill is unclear if the anti-retaliation provisions would prohibit firing a party for being abusive. The bill requires businesses to go to court to prove the affirmative defenses.

Persons Testifying (Labor & Commerce): PRO: Senator Maralyn Chase, Prime Sponsor; Pamela Raphael, LMHC, President, Coalition for a Respectful Workplace; Steve May, Coalition for a Respectful Workplace; Diana Woycheshin, Coalition for a Respectful Workplace; Herb Krohn, SMART Transportation Division/United Transportation Union.

CON: Bruce Beckett, Washington Retail Association; Bob Battles, AWB.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.