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SENATE BILL 6435

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State of Washington                      65th Legislature                      2018 Regular Session

By Senators Cleveland, Keiser, Kuderer, and Saldaña

Read first time 01/17/18. Referred to Committee on Labor & Commerce.

1            AN ACT Relating to establishing healthy workplaces; and adding a  
2 new chapter to Title 49 RCW.

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

4            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that the social  
5 and economic well-being of the state is dependent upon healthy and  
6 productive employees. At least one-third of all employees directly  
7 experience health endangering workplace bullying, abuse, and  
8 harassment during their working lives. This form of mistreatment is  
9 four times more prevalent than sexual harassment alone. Workplace  
10 bullying, mobbing, and harassment can inflict serious harm upon  
11 targeted employees, including feelings of shame and humiliation,  
12 severe anxiety, depression, suicidal tendencies, impaired immune  
13 systems, hypertension, increased risk of cardiovascular disease, and  
14 symptoms consistent with posttraumatic stress disorder.

15            (2) The legislature also finds that abusive work environments can  
16 have serious consequences for employers, including reduced employee  
17 productivity and morale, higher turnover and absenteeism rates, and  
18 significant increases in medical and workers' compensation claims.

19            (3) The legislature further finds that if mistreated employees  
20 who have been subjected to abusive treatment in the workplace cannot  
21 establish that the behavior was motivated by an unfair practice, as

1 prohibited in the law against discrimination under RCW 49.60.180,  
2 such employees are unlikely to be protected by the law against such  
3 mistreatment.

4 (4) The legislature declares that legal protection from abusive  
5 work environments should not be limited to behavior grounded in a  
6 protected class status as required by the law against discrimination  
7 statutes. Existing workers' compensation provisions and common law  
8 tort law are inadequate to discourage such mistreatment or to provide  
9 adequate redress to employees who have been harmed by abusive work  
10 environments.

11 (5) The purpose of this chapter is to provide legal redress for  
12 employees who have been harmed psychologically, physically, or  
13 economically by deliberate exposure to abusive work environments; and  
14 to provide legal incentives for employers to prevent and respond to  
15 abusive mistreatment of employees at work.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply  
17 throughout this chapter unless the context clearly requires  
18 otherwise.

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

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

34 (3) "Constructive discharge" means abusive conduct: (a) That  
35 causes the employee to resign; (b) before resigning, the employee  
36 brings to the employer's attention the existence of the abusive  
37 conduct; and (c) the employer fails to take reasonable steps to  
38 eliminate the conduct.

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

10 (5) "Negative employment decision" means a termination,  
11 constructive discharge, demotion, unfavorable reassignment, refusal  
12 to promote, or disciplinary action.

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

16 (7) "Psychological harm" means the material impairment of a  
17 person's mental health, as documented by a competent psychologist,  
18 psychiatrist, or psychotherapist, or supported by competent expert  
19 evidence at trial.

20 NEW SECTION. **Sec. 3.** (1) No employee shall be subjected to an  
21 abusive work environment.

22 (2) No employer or employee shall retaliate in any manner against  
23 an employee who has opposed any unlawful employment practice under  
24 this chapter, or who has made a charge, testified, assisted, or  
25 participated in any manner in an investigation or proceeding under  
26 this chapter, including, but not limited to, internal complaints and  
27 proceedings, arbitration and mediation proceedings, and legal  
28 actions.

29 NEW SECTION. **Sec. 4.** (1) An employer is vicariously liable for  
30 a violation of section 3 of this act committed by its employee.

31 (2) Where the alleged violation of section 3 of this act does not  
32 include an adverse employment action, it is an affirmative defense  
33 for an employer only that:

34 (a) The employer exercised reasonable care to prevent and correct  
35 promptly any actionable behavior; and

36 (b) The complainant employee unreasonably failed to take  
37 advantage of appropriate preventive or corrective opportunities  
38 provided by the employer.

1        NEW SECTION.    **Sec. 5.**    (1) An employee may be individually liable  
2 for a violation of section 3 of this act.

3        (2) It is an affirmative defense for an employee only that the  
4 employee committed a violation of section 3 of this act at the  
5 direction of the employer, under actual or implied threat of an  
6 adverse employment action.

7        NEW SECTION.    **Sec. 6.**    It is an affirmative defense to an action  
8 brought under this act that the complaint is based on:

9        (1) An adverse employment action reasonably made for poor  
10 performance, misconduct, or economic necessity;

11        (2) A reasonable performance evaluation; or

12        (3) An employer's reasonable investigation about potentially  
13 illegal or unethical activity.

14        NEW SECTION.    **Sec. 7.**    (1) If a defendant has been found liable  
15 for a violation of section 3 of this act, the court may enjoin the  
16 defendant from engaging in the unlawful employment practice and may  
17 order any other relief that is deemed appropriate including, but not  
18 limited to, reinstatement, removal of the offending party from the  
19 plaintiff's work environment, reimbursement for lost wages, front  
20 pay, medical expenses, compensation for pain and suffering,  
21 compensation for emotional distress, punitive damages, and reasonable  
22 costs and attorneys' fees.

23        (2) If an employer is liable for a violation of section 3 of this  
24 act that did not include an adverse employment action, emotional  
25 distress damages and punitive damages may be awarded only when the  
26 actionable conduct was extreme and outrageous. This limitation does  
27 not apply to individually named employee defendants.

28        NEW SECTION.    **Sec. 8.**    (1) The provisions of this chapter are  
29 enforceable solely by means of a civil cause of action commenced by  
30 an injured employee.

31        (2) An action to enforce the provisions of this chapter must be  
32 commenced within one year of the last act that constitutes the  
33 alleged violation of section 3 of this act.

34        NEW SECTION.    **Sec. 9.**    This act does not prevent, interfere,  
35 exempt, or supersede any current provisions of an employee's existing  
36 collective bargaining agreement that provides greater rights and

1 protections than prescribed in this chapter nor does this chapter  
2 prevent any new provisions of a collective bargaining agreement that  
3 provide greater rights and protections from being implemented and  
4 applicable to the employee within the collective bargaining  
5 agreement. If the collective bargaining agreement provides greater  
6 rights and protections than prescribed in this chapter, the  
7 recognized collective bargaining agent may opt to accept or reject to  
8 be covered by the provisions of this chapter.

9 NEW SECTION. **Sec. 10.** (1) This chapter does not exempt any  
10 person or entity from any liability, duty, or penalty provided by any  
11 other state law or rule.

12 (2) The remedies provided in this chapter are in addition to any  
13 remedies provided under any other provision of law, and nothing in  
14 this chapter relieves any person from any liability, duty, penalty,  
15 or punishment provided by any other provision of law, except that if  
16 an employee receives workers' compensation for medical costs for the  
17 same injury or illness under both this chapter and the workers'  
18 compensation law, or compensation under both this chapter and such  
19 law in cash payments for the same period of time not working as a  
20 result of the compensable injury or illness or the unlawful  
21 employment practice, the payments of workers' compensation must be  
22 reimbursed from damages paid under this chapter.

23 NEW SECTION. **Sec. 11.** This chapter applies to abusive conduct  
24 occurring on or after the effective date of this section.

25 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act  
26 constitute a new chapter in Title 49 RCW.

27 NEW SECTION. **Sec. 13.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

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