
HOUSE BILL 2681

State of Washington

66th Legislature

2020 Regular Session

By Representatives Stonier, Eslick, Harris, Macri, Thai, Riccelli, Sells, Robinson, Cody, Kilduff, Davis, Gregerson, Chapman, Tharinger, Ormsby, Walen, Tarleton, Ortiz-Self, Valdez, Shewmake, Lovick, Goodman, Frame, Orwall, and Pollet

Read first time 01/17/20. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to preventing harassment, abuse, and
2 discrimination experienced by long-term care workers; adding a new
3 chapter to Title 49 RCW; creating a new section; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that, as the
7 citizens of Washington state age and their life expectancy increases,
8 demand for long-term care is also on the rise. Like many Americans,
9 Washingtonians prefer to stay in their own homes and communities as
10 they age, fueling an increased demand for home-based long-term
11 services and supports. Nationally, the direct care workforce is
12 expected to increase by more than one million jobs, making this one
13 of the fastest growing occupations in the country.

14 (2) Workplace violence, including verbal and physical aggression,
15 as well as sexual harassment, is an occupational hazard for home care
16 workers. Studies have found as many as sixty percent of home care
17 workers have experienced verbal aggression and as many as thirty
18 percent have experienced sexual harassment.

19 (3) Workplace violence can lead to negative health outcomes,
20 including depression, flashbacks, sleeplessness, traumatic stress
21 disorder, and poorer physical health, the effects of which can last

1 for years. This can lead to increased turnover and lower quality of
2 care.

3 (4) About twenty-five percent of people who receive in-home long-
4 term supports and services in Washington live with behavioral health
5 challenges. Cognitive decline and impairments and behavioral health
6 challenges may sometimes manifest with individuals communicating
7 their needs in ways that if an individual caring for this person is
8 inadequately prepared, may be experienced as harassment, abusive, or
9 violent.

10 (5) Adequate preparation of caregivers prior to caring for
11 individuals with behavioral health needs helps both the caregiver and
12 person receiving care. Caregivers should be equipped with existing
13 tools like behavioral management plans and others that look at root
14 causes of behaviors.

15 (6) The legislature further finds that caregivers are the
16 backbone of long-term services and supports in Washington. Therefore,
17 the intent of this act is to reduce the instances of harassment,
18 discrimination, and abuse experienced by caregivers, and ensure that
19 they feel safe while providing care. This will improve the quality of
20 care provided to Washingtonians and build a strong workforce to meet
21 future care needs in the state.

22 NEW SECTION. **Sec. 2.** The definitions in this section apply
23 throughout this chapter unless the context clearly requires
24 otherwise.

25 (1) "Abusive conduct" means conduct in a work setting that
26 qualifies as workplace aggression, workplace violence, sexual
27 assault, or inappropriate sexual behavior.

28 (2) "Covered employer" means:

29 (a) A consumer directed employer as defined in RCW 74.39A.009;
30 and

31 (b) A home care agency as defined in RCW 70.127.010.

32 (3) "Department" means the department of labor and industries.

33 (4) "Discrimination" means employment discrimination prohibited
34 by chapter 49.60 RCW, including discriminatory harassment. It shall
35 not constitute discrimination for a recipient of personal care
36 services as defined in RCW 74.39A.009 to refuse to hire or terminate
37 an employment relationship with an employee based on gender
38 preferences.

1 (5) "Discriminatory harassment" is unwelcome conduct that is
2 based on a protected class listed in RCW 49.60.030(1) where the
3 conduct is severe or pervasive enough to create a work environment
4 that a reasonable person would consider intimidating, hostile, or
5 abusive. "Discriminatory harassment" includes sexual harassment.

6 (6) "Inappropriate sexual behavior" means nonphysical acts of a
7 sexual nature that a reasonable person would consider offensive or
8 intimidating, such as sexual comments, unwanted requests for dates or
9 sexual favors, or leaving sexually explicit material in view. An act
10 may be considered inappropriate sexual behavior independent of
11 whether the act is severe or pervasive enough to be considered sexual
12 harassment.

13 (7) "Long-term care workers" means all persons who provide paid,
14 hands-on personal care services for the elderly or persons with
15 disabilities, including individual providers of home care services,
16 direct care workers employed by home care agencies or a consumer
17 directed employer, and providers of home care services to persons
18 with developmental disabilities under Title 71A RCW.

19 (8) "Sexual assault" means any type of sexual contact or behavior
20 that occurs without the explicit consent of the recipient.

21 (9) "Sexual contact" has the same meaning as in RCW 9A.44.010.

22 (10) "Sexual harassment" has the same meaning as in RCW
23 28A.640.020.

24 (11) "Workplace aggression" means acts of nonphysical hostility
25 or threats of violence in the work setting, such as cornering an
26 individual or slamming a door. "Workplace aggression" includes verbal
27 aggression such as yelling, insulting, or belittling an individual.

28 (12) "Workplace violence," "violence," or "violent act" means the
29 occurrence of physical assault or physically threatening behavior in
30 a work setting, such as hitting, kicking, biting, or bumping with
31 intentional force. "Workplace violence," "violence," and "violent
32 act" includes physical assault or verbal threat of physical assault
33 involving the use of a weapon or a common object used as a weapon,
34 regardless of whether the use of a weapon resulted in injury.

35 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2021, each
36 covered employer must adopt and maintain a comprehensive written
37 policy concerning how the covered employer shall address instances of
38 discrimination and abusive conduct. The covered employer must:

1 (a) Disseminate the comprehensive written policy to each employee
2 at the beginning of employment, annually, and on the issuance of any
3 substantive update to the comprehensive written policy;

4 (b) Post the comprehensive written policy in prominent locations
5 at its place of business and in a prominent location on its web site,
6 if applicable. The covered employer must also send a copy of the
7 comprehensive written policy to each of its employees electronically;

8 (c) Make the policy available in plain English and in each of the
9 three languages spoken most by its employees;

10 (d) Review and update the adopted policy annually; and

11 (e) Ensure that all employees are aware of the current policy and
12 are properly trained on such policies.

13 (2) At a minimum, the comprehensive written policy must include:

14 (a) A definition of discrimination, harassment, and abusive
15 conduct in employment;

16 (b) A description of the types of behaviors prohibited by the
17 policy, with examples relevant to the long-term care workforce;

18 (c) The identification of multiple persons to whom an employee
19 may report discrimination and abusive conduct;

20 (d) A description of multiple methods for reporting
21 discrimination and abusive conduct;

22 (e) Stated permission and a process for allowing workers to leave
23 situations where they feel their safety is at immediate risk. This
24 process must include a requirement to notify the employer and
25 applicable third parties such as department of social and health
26 services case managers, emergency services, or client decisionmakers
27 as soon as possible;

28 (f) A stated prohibition against retaliation for actions related
29 to disclosing, reporting, testifying, assisting in an investigation,
30 or challenging discrimination or abusive conduct and a description of
31 how the employer will protect employees against retaliatory behavior;

32 (g) A list of resources for long-term care workers to utilize. At
33 a minimum, the resources must include contact information of the
34 equal employment opportunity commission, the Washington state human
35 rights commission, and local advocacy groups focused on preventing
36 harassment and discrimination; and

37 (h) Any additional components recommended by the work group
38 established in section 7 of this act for the purpose of preventing
39 discrimination and abusive conduct.

1 NEW SECTION. **Sec. 4.** (1) Beginning January 1, 2021, and every
2 three years thereafter, each covered employer shall implement a plan
3 to prevent and protect employees from violence. The plan shall be
4 developed and monitored by a workplace violence committee. The
5 members of the workplace violence committee shall consist of
6 individuals that are employee-elected, employer-selected, and include
7 at least one client representative. The number of employee-elected
8 members shall equal or exceed the number of employer-selected
9 members.

10 (2) The plan developed under subsection (1) of this section must
11 outline strategies to address security considerations and factors
12 that contribute to, or prevent, violence and abusive conduct, and may
13 include:

14 (a) Emergency response processes and procedures, including
15 information on providing first aid and available security personnel;

16 (b) Processes for reporting violent acts and abusive conduct;

17 (c) Processes for identifying and responding to the root cause of
18 a client's conduct when an employee has reason to believe that the
19 conduct is due to a client's condition;

20 (d) The development of employee education and training
21 requirements related to the prevention of, and response to, violent
22 and abusive conduct, including de-escalation procedures and
23 information on identifying environmental risk factors. The employee
24 education and training requirements must be based on the
25 recommendations of the work group established in section 7 of this
26 act; and

27 (e) The development of processes for intervening and providing
28 assistance to an employee directly affected by a violent act.

29 (3) Each covered employer and workplace violence committee must
30 annually review the frequency of incidents of workplace violence and
31 abusive conduct in the home care setting, including identification of
32 the causes for, and consequences of, violent acts and any emerging
33 issues that contribute to violence and abusive conduct. The covered
34 employer must adjust the plan developed under subsection (1) of this
35 section as necessary based on this annual review.

36 (4) In developing the plan required by subsection (1) of this
37 section, the covered employer shall consider any guidelines on
38 violence in the workplace or in health care settings issued by the
39 department of health, the department of social and health services,
40 the department of labor and industries, the federal occupational

1 safety and health administration, and the work group created in
2 section 7 of this act.

3 NEW SECTION. **Sec. 5.** (1) Covered employers must inform an
4 employee of instances of known discrimination and abusive conduct
5 occurring in or around the client's home prior to assigning the
6 employee to that client and throughout the duration of service.

7 (2) Covered employers must inform an employee if the employer has
8 reason to believe that discriminatory or abusive conduct may occur in
9 or around the client's home, prior to assigning the employee to that
10 client and throughout the duration of service.

11 (3) Communication of the information in subsections (1) and (2)
12 of this section must be tailored to respect the privacy of clients in
13 accordance with the federal health insurance portability and
14 accountability act of 1996.

15 (4) A covered employer may not terminate an employee, reduce the
16 pay of an employee, or not offer future assignments to an employee
17 for requesting reassignment due to alleged discrimination or abusive
18 conduct.

19 NEW SECTION. **Sec. 6.** (1) Covered employers are required to keep
20 a record of any reported incidents of discrimination or abusive
21 conduct experienced by an employee during the provision of paid
22 personal care services. The records must be kept for at least five
23 years following the reported act and must be made available for
24 inspection by the department upon request.

25 (2) The retained records must include:

26 (a) The covered employer's name and address;

27 (b) The date, time, and location of where the act occurred;

28 (c) The reporting method;

29 (d) The name of the person who experienced the act;

30 (e) A description of the person committing the act as:

31 (i) A client;

32 (ii) Another resident of the home care setting;

33 (iii) A visitor to the home care setting;

34 (iv) Another employee;

35 (v) A manager or supervisor; or

36 (vi) Other;

37 (f) A description of the type of act as:

38 (i) Discrimination, including harassment and sexual harassment;

- 1 (ii) Verbal aggression;
- 2 (iii) Physical aggression without assault;
- 3 (iv) Physical assault; or
- 4 (v) Sexual assault;
- 5 (g) A description of the actions taken by the employee and the
- 6 covered employer in response to the act; and
- 7 (h) A description of how the incident was resolved.
- 8 (3) Covered employers are required to submit the following
- 9 aggregate data to the department annually and the department must
- 10 make the data available to the public upon request:
- 11 (a) The number of reported incidents of discrimination and
- 12 abusive conduct by category and type;
- 13 (b) The number of investigations related to discrimination and
- 14 abusive conduct initiated;
- 15 (c) The number of concluded investigations that were initiated in
- 16 (b) of this subsection;
- 17 (d) The resolution of complaints by type of resolution;
- 18 (e) The date the policy required by section 3 of this act was
- 19 most recently updated;
- 20 (f) The date the prevention plan required by section 4 of this
- 21 act was most recently updated.

22 NEW SECTION. **Sec. 7.** (1) The department of labor and industries

23 must convene a stakeholder work group to recommend best practices for

24 training employers, long-term care workers, and clients to keep home

25 care settings free from discrimination and abusive conduct while

26 maintaining the ability for individuals who need services to access

27 needed services or while maintaining the ability to provide services.

28 (2) To the extent practicable, the following groups should be

29 represented in the work group, each group may have up to two

30 representatives:

- 31 (a) The department of social and health services;
- 32 (b) The department;
- 33 (c) The Washington state human rights commission;
- 34 (d) Covered employers;
- 35 (e) Labor organizations representing long-term care workers;
- 36 (f) Organizations with experience training long-term care
- 37 workers;
- 38 (g) The self-advocacy community; and

1 (h) Subject matter experts determined to be necessary by the
2 department.

3 (3) In developing the training, the work group may consider:

4 (a) Using new employee orientation to emphasize the prevention of
5 discrimination and abusive conduct;

6 (b) Requiring training for all employees in a classroom
7 environment;

8 (c) Interactive teaching strategies that engage across multiple
9 literacy levels;

10 (d) Behaviors and factors that are predictive of harassment and
11 violence;

12 (e) The violence escalation cycle;

13 (f) De-escalation techniques to minimize violent behavior;

14 (g) Strategies to prevent physical harm with hands-on practice or
15 role play;

16 (h) Documenting and reporting incidents;

17 (i) The debriefing process for affected employees following
18 violent acts;

19 (j) Resources available to employees for coping with the effects
20 of violence; and

21 (k) Other best practices from trainings developed in other states
22 or for other industries to prevent discrimination and abusive conduct
23 in home care settings or the workplace.

24 (4) By December 1, 2020, the work group must submit to the
25 legislature a report with recommendations for training long-term care
26 workers, agency supervisors, and clients. The recommendations must
27 include:

28 (a) Minimum training requirements for workers, supervisors, and
29 clients;

30 (b) Recommended training modalities for workers, supervisors, and
31 clients; and

32 (c) Criteria for qualified long-term care worker training
33 organizations.

34 NEW SECTION. **Sec. 8.** (1) The director of the department may
35 assess a civil penalty in an amount not to exceed five thousand
36 dollars for each instance a covered employer fails to meet the
37 requirements of sections 3 through 7 of this act. The department must
38 deposit civil penalties assessed under this act in the supplemental
39 pension fund established under RCW 51.44.033.

1 (2) The civil penalties assessed shall cover the department's
2 administrative costs for enforcing the requirements of sections 3
3 through 7 of this act. In the event the funds from civil penalties
4 exceed the department's cost for enforcement, the department shall
5 utilize the excess funds to grant money to community organizations
6 that will assist the department with enforcement. The department may
7 work with stakeholders to develop the community enforcement grant
8 program.

9 (3) A covered employer's failure to meet the requirements of this
10 chapter shall be evidence of a breach of duty of care.

11 (4) The department may conduct investigations to ensure
12 compliance with this chapter when information is obtained that a
13 covered employer may be committing a violation under this chapter.
14 This information includes, but is not limited to, complaints from
15 employees, and the data that is required by section 6 of this act to
16 be submitted to the department by covered employers.

17 (5) The department may prioritize investigations as needed to
18 allow for timely resolution.

19 (6) Nothing in this chapter limits the department's ability to
20 investigate under any other authority.

21 (7) Nothing in this chapter limits a worker's right to pursue
22 private legal action.

23 NEW SECTION. **Sec. 9.** Sections 1 through 6 and 8 of this act
24 constitute a new chapter in Title 49 RCW.

--- END ---