

SB3566



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3566

Introduced 2/10/2010, by Sen. William Delgado

SYNOPSIS AS INTRODUCED:

New Act

Creates the Abusive Work Environment Act. Provides findings and purposes of the Act; definitions; unlawful employment practices, including abusive work environment and retaliation; employer liability and affirmative defense; employee liability and affirmative defense; relief; procedures and limitations; effect of the Act on other legal relationships; and other matters.

LRB096 20513 AJO 36195 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Abusive Work Environment Act.

6 Section 5. Findings and purpose.

7 (a) Findings. The General Assembly finds that:

8 (1) The social and economic well-being of the State is
9 dependent upon healthy and productive employees.

10 (2) Between 37% and 59% of employees directly
11 experience health-endangering workplace bullying, abuse,
12 and harassment, and this mistreatment is approximately 4
13 times more prevalent than sexual harassment alone.

14 (3) Workplace bullying, mobbing, and harassment can
15 inflict serious harm upon targeted employees, including
16 feelings of shame and humiliation, severe anxiety,
17 depression, suicidal tendencies, an impaired immune
18 system, hypertension, an increased risk of cardiovascular
19 disease, and symptoms consistent with post-traumatic
20 stress disorder.

21 (4) Abusive work environments can have serious
22 consequences for employers, including reduced employee
23 productivity and morale, higher turnover and absenteeism

1 rates, and increases in medical and workers' compensation
2 claims.

3 (5) If mistreated employees who have been subjected to
4 abusive treatment at work cannot establish that the
5 behavior was motivated by race, color, sex, sexual
6 orientation, national origin, or age, they are unlikely to
7 be protected by the law against such mistreatment.

8 (6) Legal protection from abusive work environments
9 should not be limited to behavior grounded in protected
10 class status as that provided for under employment
11 discrimination statutes.

12 (7) Existing workers' compensation plans and
13 common-law tort actions are inadequate to discourage this
14 behavior or to provide adequate relief to employees who
15 have been harmed by abusive work environments.

16 (b) Purposes. The purposes of this Act are:

17 (1) to provide legal relief for employees who have been
18 harmed, psychologically, physically, or economically, by
19 being deliberately subjected to abusive work environments;
20 and

21 (2) to provide legal incentive for employers to prevent
22 and respond to abusive mistreatment of employees at work.

23 Section 10. Definitions. As used in this Act:

24 (a) "Abusive work environment" means an environment that
25 exists when the defendant, acting with malice, subjects an

1 employee to abusive conduct so severe that it causes tangible
2 harm to the employee.

3 (1) "Abusive conduct" means conduct, including acts,
4 omissions, or both, that a reasonable person would find
5 hostile, based on the severity, nature, and frequency of
6 the defendant's conduct. Abusive conduct may include, but
7 is not limited to: repeated infliction of verbal abuse such
8 as the use of derogatory remarks, insults, and epithets;
9 verbal or physical conduct of a threatening, intimidating,
10 or humiliating nature; the sabotage or undermining of an
11 employee's work performance; or attempts to exploit an
12 employee's known psychological or physical vulnerability.
13 A single act normally will not constitute abusive conduct,
14 but an especially severe and egregious act may meet this
15 standard.

16 (2) "Malice" means the desire to cause pain, injury, or
17 distress to another.

18 (b) "Tangible harm" means psychological harm or physical
19 harm.

20 (1) "Psychological harm" means the material impairment
21 of a person's mental health, as established by competent
22 evidence.

23 (2) "Physical harm" means the material impairment of a
24 person's physical health or bodily integrity, as
25 established by competent evidence.

26 (c) "Adverse employment action" means an action that

1 includes, but is not limited to, a termination, demotion,
2 unfavorable reassignment, failure to promote, disciplinary
3 action, or reduction in compensation.

4 (d) "Constructive discharge" exists where: (1) the
5 employee reasonably believed he or she was subjected to abusive
6 conduct; (2) the employee resigned because of that abusive
7 conduct; and (3) prior to resigning, the employee brought to
8 the employer's attention the existence of the abusive conduct
9 and the employer failed to take reasonable steps to correct the
10 situation. A constructive discharge shall be considered a
11 termination, and, therefore, an adverse employment action
12 within the meaning of this Act.

13 (e) "Employer" includes the State or any subdivision
14 thereof, any county, municipality, unit of local government,
15 school district, community college district, municipal or
16 public corporation, or State university.

17 Section 15. Unlawful employment practices.

18 (a) Abusive work environment. It shall be an unlawful
19 employment practice under this Act to subject an employee to an
20 abusive work environment as defined by this Act.

21 (b) Retaliation. It shall be an unlawful employment
22 practice under this Act to retaliate in any manner against an
23 employee who has opposed any unlawful employment practice under
24 this Act, or who has made a charge, testified, assisted, or
25 participated in any manner in an investigation or proceeding

1 under this Act, including, but not limited to, internal
2 complaints and proceedings, arbitration and mediation
3 proceedings, and legal actions.

4 Section 20. Employer liability and defense.

5 (a) Employer liability. An employer shall be vicariously
6 liable for an unlawful employment practice, as defined by this
7 Act, committed by its employee.

8 (b) Employer's affirmative defense. Where the alleged
9 unlawful employment practice does not include an adverse
10 employment action, it shall be an affirmative defense for an
11 employer only that:

12 (1) the employer exercised reasonable care to prevent
13 and correct promptly any actionable behavior; and

14 (2) the complainant employee unreasonably failed to
15 take advantage of appropriate preventive or corrective
16 opportunities provided by the employer.

17 Section 25. Employee liability and defense.

18 (a) Employee liability. An employee may be individually
19 liable for an unlawful employment practice as defined by this
20 Act.

21 (b) Employee affirmative defense. It shall be an
22 affirmative defense for an employee only that the employee
23 committed an unlawful employment practice, as defined in this
24 Act, at the direction of the employer, under threat of an

1 adverse employment action.

2 Section 30. Affirmative defenses. It shall be an
3 affirmative defense that:

4 (1) the complaint is based on an adverse employment action
5 reasonably made for poor performance, misconduct, or economic
6 necessity;

7 (2) the complaint is based on a reasonable performance
8 evaluation; or

9 (3) the complaint is based on an employer's reasonable
10 investigation about potentially illegal or unethical activity.

11 Section 35. Relief.

12 (a) Relief generally. Where a defendant has been found to
13 have committed an unlawful employment practice under this Act,
14 the court may enjoin the defendant from engaging in the
15 unlawful employment practice and may order any other relief
16 that is deemed appropriate, including, but not limited to,
17 reinstatement, removal of the offending party from the
18 complainant's work environment, back pay, front pay, medical
19 expenses, compensation for emotional distress, punitive
20 damages, and attorney's fees.

21 (b) Employer liability. Where an employer has been found to
22 have committed an unlawful employment practice under this Act
23 that did not culminate in an adverse employment action, its
24 liability for damages for emotional distress shall not exceed

1 \$25,000, and it shall not be subject to punitive damages. This
2 provision does not apply to an individually named employee
3 defendant.

4 Section 40. Procedures.

5 (a) Private right of action. This Act shall be enforced
6 solely by a private right of action.

7 (b) Time limitations. An action under this Act must be
8 commenced no later than one year after the last act that
9 constitutes the alleged unlawful employment practice.

10 Section 45. Effect on other legal relationships. The
11 remedies provided for in this Act shall be in addition to any
12 remedies provided under any other law, and nothing in this Act
13 shall relieve any person from any liability, duty, penalty or
14 punishment provided by any other law, except that if an
15 employee receives workers' compensation for medical costs for
16 the same injury or illness pursuant to both this Act and the
17 Workers' Compensation Act, or compensation under both this Act
18 and that Act in cash payments for the same period of time not
19 working as a result of the compensable injury or illness or the
20 unlawful employment practice, the payments of workers'
21 compensation shall be reimbursed from compensation paid under
22 this Act.