

HOUSE BILL REPORT

HB 2142

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to providing legal redress for targets of workplace bullying, abuse, and harassment.

Brief Description: Providing legal redress for targets of workplace bullying, abuse, and harassment.

Sponsors: Representatives Linville, Conway, Morrell, Chase, Kenney, Moeller, Santos and Ormsby.

Brief History:

Committee Activity:

Commerce & Labor: 2/1/08, 2/5/08 [DPS].

Brief Summary of Substitute Bill

- Makes it an unlawful employment practice to subject a state employee to an abusive work environment.
- Defines "abusive work environment" as a workplace where a state employee is subject to severe abusive conduct that causes physical or psychological harm.
- Grants an aggrieved employee a private right of action if administrative remedies are exhausted.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse.

Staff: Jill Reinmuth (786-7134).

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.

Background:

Workers are protected from certain types of harassment and abusive conduct in the workplace by statute and common law. Workers are protected from status-based discrimination by federal and state law. 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.

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.

Legislation related to workplace bullying has been introduced in 12 other states (California, Connecticut, Hawaii, Kansas, Massachusetts, Missouri, Montana, New Jersey, New York, Oregon, Oklahoma, and Vermont), but not enacted. A few countries and a few provincial governments in other countries have laws regarding workplace bullying.

Summary of Substitute Bill:

A new chapter, which makes it an unlawful employment practice to subject a state employee to an abusive work environment, is enacted. The new chapter may be enforced by a private right of action so long as administrative remedies are exhausted.

Findings and Intent

The Legislature finds that:

- the state's well-being is dependent on healthy and productive employees;
- between 16 and 21 percent of employees experience workplace bullying;
- workplace bullying is four times more prevalent than sexual harassment;
- abusive workplace environments can have serious effects on employees;
- abusive workplace environments can have serious consequences for employers;
- mistreated employees are unlikely to have legal recourse; and
- existing laws provide inadequate protection.

The Legislature intends to provide:

- legal redress for state employees who have been harmed by abusive work environments; and
- legal incentives for the state to prevent and respond to mistreatment of state employees at work.

Unlawful Practices

It is an unlawful employment practice to subject a state employee to an abusive work environment or to retaliate against a state employee because he or she opposed such a practice or participated in any investigation or proceeding related to such a practice.

An "abusive work environment" is a workplace where an employee is subject to severe abusive conduct that causes physical or psychological harm.

"Abusive conduct" is conduct of an employer or employees 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 verbal abuse, threatening, intimidating, or humiliating verbal or physical conduct, or the gratuitous sabotage or undermining of a person's work performance. In considering whether conduct is abusive, the severity, nature, and frequency of the conduct are weighed. A single act is not abusive conduct unless it is especially severe and egregious. "Malice" is the desire to see another person suffer psychological, physical, or economic harm, without legitimate cause or justification. Malice may be inferred from a variety of factors.

"Physical harm" is the material impairment of person's physical health or bodily integrity, as documented by a physician or supported by expert evidence. Similarly, "psychological harm" is the material impairment of a person's mental health, as documented by a psychologist, psychiatrist, or psychotherapist, or supported by expert evidence.

Affirmative Defenses

It is an affirmative defense that the State of Washington exercised reasonable care to prevent and promptly correct the abusive conduct and the aggrieved state employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities. It is also an affirmative defense that the complaint is grounded primarily upon a negative employment decision made consistent with the state's legitimate business interests, or its reasonable investigation of potentially illegal or unethical activity.

Civil Actions and Remedies

An aggrieved state employee may file a civil action alleging an unfair employment practice only after exhausting administrative remedies. Such an action may be commenced no later than one year after all administrative remedies have been exhausted.

Where the State of Washington committed an unlawful employment practice, the court may enjoin the State from engaging in the practice and may order other appropriate relief. The court may order reinstatement or removal of the offending party from the complainant's work environment. The court also may order compensation for actual damages (e.g., back pay, front pay, or medical expenses), compensation for emotional distress, and attorneys' fees. Where the State committed an unlawful employment practice that did not result in a negative employment decision, compensation for emotional distress may not exceed \$25,000.

The State is vicariously liable for an unlawful employment practice committed by its employee. Nothing in the new chapter exempts or relieves any person from any liability, duty, penalty, or punishment provided by any other laws.

Application

The new chapter applies to state agencies with at least 100 full-time equivalent (FTE) employees beginning July 1, 2008, and to all state agencies beginning July 1, 2010.

Substitute Bill Compared to Original Bill:

The terms "employer" and "employee" are defined as the State of Washington and its employees. The provisions are made applicable to state agencies with at least 100 FTE employees beginning July 1, 2008, and to all state agencies beginning July 1, 2010. Exhaustion of administrative remedies is required before civil actions may be filed. Punitive damages are not authorized. References to workers' compensation are stricken.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is an opportunity to break new ground. Through constituents, I learned that employees have no recourse when facing an abusive work environment. The proposed substitute bill only applies to the State of Washington as an employer. Other employers may follow voluntarily.

If exhaustion of internal remedies is required, the time for filing an action should be one year from exhaustion.

Civility in the workplace is declining. Teasing and humiliation is not tolerated in school yards. Long before fists and bullets fly, workplace violence has occurred. People believe cruelty at work is acceptable. According to a recent survey, 49 percent of workers have been bullied or have witnessed it. The science documenting this harm is irrefutable.

Although bullying is common, this bill will not lead to a flood of lawsuits. There is a very high threshold for filing suit.

Bullying ended my career, and left me suffering with post-traumatic stress disorder.

Accountability is needed to make sure employers address bullying.

Neither the Equal Employment Opportunity Commission or the Human Rights Commission could provide any relief. A healthy work environment that is free from bullies is needed.

Bullying in my office involved lost or ransacked files, secret meetings, intimidation, and various tactics designed to make me appear irresponsible. Ultimately, I was forced out.

This problem affects millions. If it was a disease, it would be a pandemic.

Bullying included imposing unwarranted discipline, mocking an employee for his accent, screaming at an employee in public, sabotaging work, giving unfavorable reviews, denying benefits earned and other employment rights, and demotion. The culture allowed this behavior to go on. The cost to the State of Washington is astronomical.

Bullying is a subject we have not been able to address either in law or in collective bargaining.

The workplace should be safe and free from abuse. Some felt as though they could not attend the hearing because of concerns about retaliation.

Principal mistreatment of teachers is common. Blatant lying is common. All employees should be treated with dignity, respect, and fairness.

One-third of American workers, about 54 million people, have experienced workplace bullying. A tragedy should not be the reason this problem is addressed.

(Neutral with concerns) The study would be better done by the Labor Relations Office than the Department of Personnel.

(Opposed) None.

Persons Testifying: (In support) Representative Linville, prime sponsor; Gary and Ruth Namie, Charlie Withers, Bonnie McAllister, Martha Woods, and David K. Bowman, Workplace Bullying Institute; Jim Sizemore; Sean Gallegos, Linda Fryant, and Luis Moscoso, Washington Public Employees Association, United Food and Commercial Workers 365; Dennis Eagle and Mary Dallman, Washington Federation of State Employees; John M. Smith, Department of Social and Health Services; Denise Graham; Patrick Murphy; and Robby Stern, Washington State Labor Council.

(Neutral with concerns) Andy Colvin, Department of Personnel.

Persons Signed In To Testify But Not Testifying: None.