

By Senator Braynon

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1 A bill to be entitled
2 An act relating to abusive workplace environments;
3 creating the "Abusive Workplace Environment Act";
4 providing legislative findings and purposes for the
5 act; defining terms; prohibiting a public employer
6 from subjecting his or her employee to an abusive
7 workplace environment; declaring that an employer
8 violates the act if he or she subjects an employee to
9 an abusive workplace environment or has knowledge that
10 any person has subjected an employee of the employer
11 to an abusive workplace environment and has failed to
12 exercise reasonable care to prevent and promptly
13 correct the abusive conduct; prohibiting an employer
14 from retaliating in any manner against an employee
15 because the employee has opposed an unlawful
16 employment practice or has made a charge, testified,
17 assisted, or participated in any manner in an
18 investigation or proceeding; providing that an
19 employer may assert an affirmative defense against the
20 employee under certain circumstances; providing that
21 an employee may be individually liable if he or she
22 commits an unlawful employment practice; providing
23 that an employee may assert an affirmative defense
24 against an employee or employer under certain
25 circumstances; providing that a violation of the act
26 may be enforced solely by a private right of action;
27 requiring that a civil action filed under the act must
28 be commenced no later than 1 year after the date of
29 the last incident that is part of the alleged unlawful

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30 employment practice; providing that if a person is
31 found to have committed an unlawful employment
32 practice that culminated in an adverse employment
33 action, the court may enjoin the person from engaging
34 in the unlawful employment practice and may order any
35 other relief that it deems appropriate, including
36 punitive damages and attorney fees; providing that if
37 an employer has been found to have committed an
38 unlawful employment practice but the act did not
39 culminate in an adverse employment action, the
40 employer is liable for damages for emotional distress
41 but is not subject to punitive damages; providing that
42 the remedies provided by the act are cumulative to
43 other laws; providing for an exception for workers'
44 compensation awards; providing an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Abusive workplace environment.—

49 (1) SHORT TITLE.—This section may be cited as the "Abusive
50 Workplace Environment Act."

51 (2) LEGISLATIVE FINDINGS AND PURPOSE.—

52 (a) The Legislature finds that:

53 1. The social and economic well-being of the state is
54 dependent upon healthy and productive employees.

55 2. Approximately one-half of all employees directly
56 experience health-endangering workplace bullying, abuse, and
57 harassment, and this mistreatment is approximately four times
58 more prevalent than sexual harassment.

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59 3. Workplace bullying and harassment can inflict serious
60 harm upon targeted employees, including feelings of shame and
61 humiliation, severe anxiety, depression, suicidal tendencies,
62 impaired immune systems, hypertension, increased risk of
63 cardiovascular disease, and symptoms consistent with
64 posttraumatic stress disorder.

65 4. An abusive workplace environment can have serious
66 consequences for employers, including reduced employee
67 productivity and morale, higher turnover and absenteeism rates,
68 and increases in medical and workers' compensation claims.

69 5. If a mistreated employee who has been subjected to
70 abusive treatment at work cannot establish that the abusive
71 behavior was motivated by race, color, sex, national origin, or
72 age, he or she is unlikely to be protected by the law against
73 such mistreatment.

74 6. Unlike employment discrimination statutes, legal
75 protection from abusive workplace environments should not be
76 limited to behavior grounded in protected-class status.

77 7. Existing workers' compensation provisions and common law
78 tort actions fall short of those necessary to eliminate abusive
79 behavior or to provide adequate relief to employees who have
80 been harmed by an abusive workplace environment.

81 (b) The purpose of this section is to provide:

82 1. Legal relief to employees who have been harmed,
83 psychologically, physically, or economically, by being
84 deliberately subjected to an abusive workplace environment; and

85 2. Incentives for employers to prevent and respond to
86 abusive mistreatment of employees at work.

87 (3) DEFINITIONS.—As used in this section, the term:

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88 (a) "Abusive conduct" means a pattern of behavior or a
89 single act of an employer or employee in the workplace which is
90 performed with malice and is unrelated to an employer's
91 legitimate business and which a reasonable person would find
92 hostile or offensive considering the severity, nature, and
93 frequency of the conduct or the severity and egregiousness of
94 the conduct. Abusive conduct includes, but is not limited to:

95 1. Repeated infliction of verbal abuse, such as the use of
96 derogatory remarks, insults, and epithets;

97 2. Verbal or physical conduct that a reasonable person
98 would find threatening, intimidating, or humiliating;

99 3. Sabotaging or undermining a person's work performance;
100 or

101 4. Attempting to exploit an employee's known psychological
102 or physical vulnerability.

103 (b) "Abusive workplace environment" means an environment in
104 which an employee is subjected to abusive conduct that is so
105 severe that it causes physical or psychological harm to the
106 employee.

107 (c) "Adverse employment action" means an employment action,
108 including, but not limited to, termination of the employee,
109 demotion or unfavorable reassignment of the employee, failure to
110 promote the employee, disciplinary action against the employee,
111 or a reduction in the compensation of the employee.

112 (d) "Conduct" means all forms of behavior, including acts
113 and omission of acts.

114 (e) "Employee" means an individual who is employed by an
115 employer.

116 (f) "Employer" means a state agency or any county,

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117 municipality, political subdivision, school district, community
118 college, or state university.

119 (g) "Malice" means the desire to see another person suffer
120 psychological, physical, or economic harm, without legitimate
121 cause or justification, which is demonstrated by the presence of
122 factors such as outward expressions of hostility, harmful
123 conduct inconsistent with an employer's legitimate business
124 interest, a continuation of harmful, illegitimate conduct after
125 a person requests that it cease or demonstrates outward signs of
126 emotional or physical distress as a result of the conduct, or
127 attempts to exploit a person's known psychological or physical
128 vulnerability.

129 (h) "Physical harm" means the material impairment of a
130 person's physical health or bodily integrity, as established by
131 competent evidence.

132 (i) "Psychological harm" means the material impairment of a
133 person's mental health, as established by competent evidence.

134 (4) UNLAWFUL EMPLOYMENT PRACTICES.—

135 (a) An employer may not subject an employee to an abusive
136 workplace environment.

137 (b) An employer may not retaliate in any manner against an
138 employee because the employee has opposed an unlawful employment
139 practice under this section, or has made a charge, testified,
140 assisted, or participated in any manner in an investigation or
141 proceeding under this section, including, but not limited to,
142 internal complaints and proceedings, arbitration and mediation
143 proceedings, or legal actions.

144 (5) EMPLOYER LIABILITY AND DEFENSE.—

145 (a) An employer violates this section if the employer

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146 subjects an employee to an abusive workplace environment or has
147 knowledge that any person has subjected an employee to an
148 abusive workplace environment and has failed to exercise
149 reasonable care to prevent and promptly correct the abusive
150 conduct.

151 (b) If the alleged unlawful employment practice does not
152 include an adverse employment action, the employer may assert an
153 affirmative defense that:

154 1. The employer exercised reasonable care to prevent or
155 promptly correct any actionable behavior; and

156 2. The complainant employee unreasonably failed to take
157 advantage of appropriate preventive or corrective opportunities
158 provided by the employer.

159 (6) EMPLOYEE LIABILITY AND DEFENSE.—

160 (a) An employee may be individually liable for an unlawful
161 employment practice against another employee.

162 (b) The employee may assert an affirmative defense that:

163 1. The employee committed the unlawful employment practice
164 at the direction of the employer, under threat of an adverse
165 employment action;

166 2. The complaint is based on an adverse employment action
167 reasonably made for poor performance, misconduct, or economic
168 necessity;

169 3. The complaint is based on a reasonable performance
170 evaluation; or

171 4. The complaint is based on a defendant's reasonable
172 investigation into potentially illegal or unethical activity.

173 (7) PROCEDURES.—

174 (a) This section may be enforced solely by a private right

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175 of action.

176 (b) A civil action filed under this section must be
177 commenced no later than 1 year after the date of the last
178 incident that is part of the alleged adverse employment action.

179 (8) RELIEF FOR THE EMPLOYEE.—

180 (a) If a person or employer has been found to have
181 committed an unlawful employment practice under this section
182 which culminated in an adverse employment action, the court may
183 enjoin the person from engaging in the unlawful employment
184 practice and may order any other relief the court deems
185 appropriate, including, but not limited to, reinstatement of the
186 employee, removal of the offending party from the complainant's
187 work environment, back pay, front pay, medical expenses,
188 compensation for emotional distress, punitive damages, and
189 attorney fees.

190 (b) If a person or employer has been found to have
191 committed an unlawful employment practice under this section
192 which did not culminate in an adverse employment action, the
193 employer is liable for damages not to exceed \$25,000 for
194 emotional distress and may not be held liable for punitive
195 damages. This paragraph does not apply to individually named
196 employee defendants.

197 (9) CUMULATIVE REMEDIES; REIMBURSEMENT REQUIRED.—

198 (a) The remedies provided in this section are in addition
199 to any other remedy provided under law.

200 (b) This section does not relieve any person from any other
201 statutory liability, duty, penalty, or punishment.

202 (c) If an employee receives workers' compensation for
203 medical costs for the same injury or illness pursuant to both

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204 this section and the Workers' Compensation Act, or compensation
205 in cash payments under both this section and the Workers'
206 Compensation Act for the same period of time the employee is not
207 working as a result of the compensable injury or illness or the
208 unlawful employment practice, the payments of workers'
209 compensation shall be reimbursed from compensation paid under
210 this section.

211 Section 2. This act shall take effect July 1, 2012.