

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, 2013.