

By Senator Bullard

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1                   A bill to be entitled  
2       An act relating to safe work environments; providing a  
3       short title; providing legislative findings and  
4       purposes; creating part III of chapter 448, F.S.;  
5       providing definitions; providing that subjecting an  
6       employee to an abusive work environment is an unlawful  
7       employment practice; prohibiting retaliation against  
8       an employee who has opposed any unlawful employment  
9       practice or who has made a charge, testified,  
10      assisted, or participated in any manner in an  
11      investigation or proceeding concerning such a claim;  
12      providing for vicarious liability for employers in  
13      certain circumstances; providing a defense; providing  
14      for liability for individual employees in certain  
15      circumstances; providing a defense; providing  
16      affirmative defenses; specifying relief available;  
17      limiting an employer's liability for emotional  
18      distress and precluding punitive damages in certain  
19      circumstances; specifying that provisions may only be  
20      enforced by a private right of action; providing time  
21      limitation on actions; providing that remedies  
22      provided shall be in addition to and not in place of  
23      other remedies provided in law; providing for  
24      reimbursement of certain compensation; amending ss.  
25      1002.42 and 1006.07, F.S.; requiring screening of  
26      certain persons before entering instructional areas;  
27      providing an effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

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31       Section 1. Short title.—This act may be cited as the “Safe  
32 Work Environment Act.”

33       Section 2. Findings and purpose.—

34       (1) FINDINGS.—The Legislature finds that:

35       (a) The social and economic well-being of the state is  
36 dependent upon healthy and productive employees.

37       (b) Between 37 percent and 59 percent of employees directly  
38 experience health-endangering workplace bullying, abuse, and  
39 harassment, and this mistreatment is approximately four times  
40 more prevalent than sexual harassment alone.

41       (c) Workplace bullying and harassment can inflict serious  
42 harm upon targeted employees, including feelings of shame and  
43 humiliation, severe anxiety, depression, suicidal tendencies,  
44 impaired immune systems, hypertension, increased risk of  
45 cardiovascular disease, and symptoms consistent with post-  
46 traumatic stress disorder.

47       (d) Abusive work environments can have serious consequences  
48 for employers, including reduced employee productivity and  
49 morale, higher turnover and absenteeism rates, and increases in  
50 medical and workers’ compensation claims.

51       (e) If mistreated employees who have been subjected to  
52 abusive treatment at work cannot establish that the behavior was  
53 motivated by race, color, sex, national origin, or age, they are  
54 unlikely to be protected by law against such mistreatment.

55       (f) Legal protection from abusive work environments should  
56 not be limited to behavior grounded in protected class status as  
57 provided for under employment discrimination statutes.

58       (g) Existing workers’ compensation plans and common-law

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59 tort actions are inadequate to discourage this behavior or to  
60 provide adequate relief to employees who have been harmed by  
61 abusive work environments.

62 (2) PURPOSE.—It is the purpose of this act to:

63 (a) Provide legal relief for employees who have been harmed  
64 psychologically, physically, or economically by being  
65 deliberately subjected to abusive work environments.

66 (b) Provide legal incentive for employers to prevent and  
67 respond to abusive mistreatment of employees at work.

68 Section 3. Part III of chapter 448, Florida Statutes,  
69 consisting of ss. 448.30-448.37, is created to read:

70 PART III

71 ABUSIVE WORK ENVIRONMENTS

72 448.30 Definitions.—As used in this part, the term:

73 (1) "Abusive conduct" means conduct, including acts or  
74 omissions that a reasonable person would find hostile based on  
75 the severity, nature, and frequency of the defendant's conduct.  
76 Abusive conduct may include, but is not limited to, repeated  
77 verbal abuse, such as the use of derogatory remarks, insults,  
78 and epithets; verbal or physical conduct of a threatening,  
79 intimidating, or humiliating nature; the sabotage or undermining  
80 of an employee's work performance; or attempts to exploit an  
81 employee's known psychological or physical vulnerability. A  
82 single act normally will not constitute abusive conduct, but an  
83 especially severe and egregious act may be found to meet this  
84 standard.

85 (2) "Abusive work environment" means a work environment  
86 that exists when an employer, acting with malice, subjects an  
87 employee to abusive conduct so severe that it causes tangible

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88 harm to the employee.

89 (3) "Adverse employment action" includes, but is not  
90 limited to, a termination, demotion, unfavorable reassignment,  
91 failure to promote, disciplinary action, reduction in  
92 compensation, or a constructive discharge.

93 (4) "Constructive discharge" exists where:

94 (a) An employee reasonably believed he or she was subjected  
95 to abusive conduct;

96 (b) The employee resigned because of the abusive conduct;  
97 and

98 (c) Before resigning, the employee brought to the  
99 employer's attention the abusive conduct and the employer failed  
100 to take reasonable steps to correct the situation.

101 (5) "Employer" includes every employer, public or private.

102 (6) "Malice" means the desire to cause pain, injury, or  
103 distress to another person.

104 (7) "Physical harm" means the material impairment of a  
105 person's physical health or bodily integrity, as established by  
106 competent evidence.

107 (8) "Psychological harm" means the material impairment of a  
108 person's mental health, as established by competent evidence.

109 (9) "Tangible harm" means psychological harm or physical  
110 harm.

111 448.31 Unlawful employment practices.-

112 (1) It is an unlawful employment practice under this part  
113 to subject an employee to an abusive work environment.

114 (2) It is an unlawful employment practice under this part  
115 to retaliate in any manner against an employee who has opposed  
116 any unlawful employment practice under this part or who has made

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117 a charge, testified, assisted, or participated in any manner in  
118 an investigation or proceeding under this part, including, but  
119 not limited to, internal complaints and proceedings, arbitration  
120 and mediation proceedings, and legal actions.

121 448.32 Employer liability and defense.—

122 (1) An employer is vicariously liable for an unlawful  
123 employment practice committed by an employee.

124 (2) If the alleged unlawful employment practice does not  
125 include an adverse employment action, it is an affirmative  
126 defense for an employer only that:

127 (a) The employer exercised reasonable care to prevent and  
128 promptly corrected any actionable behavior.

129 (b) The complainant employee unreasonably failed to take  
130 advantage of appropriate preventive or corrective opportunities  
131 provided by the employer.

132 448.33 Employee liability and defense.—

133 (1) An employee may be individually liable for an unlawful  
134 employment practice.

135 (2) It is an affirmative defense for an employee only that  
136 the employee committed an unlawful employment practice at the  
137 direction of the employer under threat of an adverse employment  
138 action.

139 448.34 Affirmative defenses.—It is an affirmative defense  
140 that:

141 (1) The complaint is based on an adverse employment action  
142 reasonably made for poor performance, misconduct, or economic  
143 necessity;

144 (2) The complaint is based on a reasonable performance  
145 evaluation; or

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146 (3) The complaint is based on a defendant's reasonable  
147 investigation about potentially illegal or unethical activity.

148 448.35 Relief.—

149 (1) GENERALLY.—If a defendant has been found to have  
150 committed an unlawful employment practice under this part, the  
151 court may enjoin the defendant from engaging in the unlawful  
152 employment practice and may order any other relief that is  
153 deemed appropriate, including, but not limited to,  
154 reinstatement, removal of the offending party from the  
155 complainant's work environment, back pay, front pay, payment of  
156 medical expenses, compensation for emotional distress, punitive  
157 damages, and attorney fees.

158 (2) EMPLOYER LIABILITY.—If an employer has been found to  
159 have committed an unlawful employment practice under this part  
160 which did not culminate in an adverse employment action, the  
161 employer's liability for damages for emotional distress may not  
162 exceed \$25,000, and the employer is not subject to punitive  
163 damages. This subsection does not apply to individually named  
164 employee defendants.

165 448.36 Procedures.—

166 (1) PRIVATE RIGHT OF ACTION.—This part may be enforced  
167 solely by a private right of action.

168 (2) TIME LIMITATIONS.—Notwithstanding any other provision  
169 of law, an action under this part must be commenced no later  
170 than 1 year after the last act that constitutes the alleged  
171 unlawful employment practice.

172 448.37 Effect on other legal relationships.—The remedies  
173 provided in this part are in addition to any remedies provided  
174 under any other law, and nothing in this part relieves a person

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175 from any liability, duty, penalty, or punishment provided by any  
176 other law, except that if an employee receives workers'  
177 compensation for medical costs for the same injury or illness  
178 under this part and chapter 440, or compensation under this part  
179 and chapter 440 in cash payments for the same period of time of  
180 not working as a result of the compensable injury or illness or  
181 the unlawful employment practice, all compensation received  
182 under chapter 440 shall be reimbursed from compensation paid  
183 under this part.

184 Section 4. Subsection (18) is added to section 1002.42,  
185 Florida Statutes, to read:

186 1002.42 Private schools.—

187 (18) CAMPUS SECURITY.—Each school serving K-12 students  
188 must provide for the screening with metal detectors of all  
189 nonemployee persons entering areas in its school building or  
190 campus where instructional activities for such students take  
191 place.

192 Section 5. Subsection (7) is added to section 1006.07,  
193 Florida Statutes, to read:

194 1006.07 District school board duties relating to student  
195 discipline and school safety.—The district school board shall  
196 provide for the proper accounting for all students, for the  
197 attendance and control of students at school, and for proper  
198 attention to health, safety, and other matters relating to the  
199 welfare of students, including:

200 (7) CAMPUS SECURITY.—Screening with metal detectors all  
201 nonemployee persons entering areas in each school building or  
202 campus where instructional activities take place.

203 Section 6. This act shall take effect July 1, 2015.