

Senate Commerce and Labor Committee 1

Amendment No. 1 to SB2226

Johnson
Signature of Sponsor

AMEND Senate Bill No. 2226

House Bill No. 1981*

by deleting all language after the caption and substituting instead the following language:

WHEREAS, the social and economic well-being of this state is dependent upon healthy and productive employees;

WHEREAS, employees may directly experience health-endangering intimidation, abuse, and harassment during their working lives;

WHEREAS, abusive work environments can have serious consequences for employers, including reduced employee productivity and morale, higher turnover and absenteeism rates, and increases in medical and workers' compensation claims;

WHEREAS, if employees, subject to abusive conduct at work, cannot establish that the behavior was motivated by race, color, sex, sexual orientation, national origin, age or any other constitutionally protected classification, then the employees are unlikely to be protected by the law against such mistreatment;

WHEREAS, legal protection from abusive work environments should not be limited to behavior grounded in protected class status as provided for under title 4, chapter 21;

WHEREAS, existing workers' compensation law and common law tort actions are inadequate to discourage intimidation, abuse, and harassment in the workplace, or to provide adequate relief to employees who have been harmed by abusive work environments;

WHEREAS, the general assembly seeks to provide legal relief for employees who have been harmed, psychologically, physically, or economically, by deliberate exposure to abusive work environments and legal incentive for employers to prevent and respond to abusive mistreatment of employees at work; now therefore,

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following language as a new part:

50-1-501. This part shall be known and may be cited as the "Healthy Workplace Bill".

50-1-502.

(1) As used in this part:

(A) "Abusive work environment" means an employer of one (1) or more employees, acting with the intent to cause pain or distress to an employee or subjecting such employee to abusive conduct that causes physical harm or psychological harm;

(B) "Abusive conduct" includes acts or omissions that would cause a reasonable person to believe that the employee was subject to an abusive work environment, based on the severity, nature, and frequency of the conduct, such as:

(i) Repeated verbal abuse including derogatory remarks, insults, and epithets;

(ii) Verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature; or

(iii) The sabotage or undermining of an employee's work performance;

(C) As used in subdivision (A):

(i) "Physical harm" means the impairment of a person's physical health or bodily integrity; and

(ii) "Psychological harm" means the impairment of a person's mental health;

(2) "Adverse employment action" means the termination, demotion, unfavorable reassignment, failure to promote, disciplinary action, or reduction in compensation; and

(3) "Constructive discharge" means a termination based on an adverse employment action where:

(A) The employee reasonably believed such employee was subject to an abusive work environment;

(B) The employee resigned because of such conduct; and

(C) The employer was aware of the abusive conduct prior to the resignation and failed to stop it.

50-1-503.

It is an unlawful employment practice under this part for an employer to:

(1) Subject an employee to an abusive work environment; or

(2) Retaliate in any manner against an employee who has opposed any unlawful employment practice, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings, and legal actions.

50-1-504.

(a) An employer shall be vicariously liable for an unlawful employment practice committed by an employee.

(b) Where the alleged unlawful employment practice does not include an adverse employment action, it shall be an affirmative defense for an employer only if:

(1) The employer exercised reasonable care to prevent and correct promptly any actionable behavior of the employee; and

(2) The employee, who alleged the abusive conduct against the employer, unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer.

50-1-505.

(a) An employee may be individually liable for an unlawful employment practice.

(b) It shall be considered an aggravating factor if the abusive conduct exploited an employee's known psychological or physical illness or disability. A single act shall not constitute abusive conduct, but an especially severe and egregious act may meet this standard.

50-1-506.

(a) It shall be an affirmative defense:

(1) For the employer, if the employer's unlawful employment practice is based on:

(A) An adverse employment action reasonably made for poor performance, misconduct, or economic necessity;

(B) A performance evaluation; or

(C) The employer's reasonable investigation of the conduct of the employee involving illegal or unethical activity; and

(2) For the employee, if the employee committed an unlawful employment practice at the direction of the employer, under an actual or implied threat of an adverse employment action.

(b) If the employer was aware of the abusive conduct, then the employee shall give the employer time to respond to the alleged unlawful practice within a timely manner.

50-1-507.

(a) If an employer or employee is found liable by a court of competent jurisdiction for an unlawful employment practice, then the court may:

(1) Enjoin the liable party from engaging in the unlawful employment practice; and

(2) Order any other relief that is deemed appropriate, including, but not limited to:

(A) Reinstatement;

(B) Removal of the liable party from the complainant's work environment;

(C) Back pay or front pay;

(D) Medical expenses;

(E) Compensation for pain and suffering;

(F) Compensation for emotional distress;

(G) Punitive damages; and

(H) Attorney's fees.

(b) If an employer is found liable for an unlawful employment practice under this part that did not include an adverse employment action, then emotional distress damages and punitive damages may be awarded only when the actionable conduct was extreme and outrageous. This limitation does not apply to individually named employee defendants.

50-1-508.

(a) This part shall be enforced solely by a private right of action.

(b) No action shall be maintained against an employer or employee for failure to comply with this part unless such action is commenced no later than one (1) year after the last act that constitutes the alleged unlawful employment practice.

50-1-509.

(a) Nothing in this part is intended to supersede the rights and obligations provided under the National Labor Relations Act, compiled in 29 U.S.C. § 151 et seq., as amended, any collective bargaining agreement or applicable federal or state labor laws.

(b) The remedies provided for in this part shall be in addition to any remedies provided under any other law, and nothing in this part shall relieve any person from any liability, duty, penalty or punishment provided by any other law.

(c) Except as provided in subsection (b), if an employee receives workers' compensation for medical costs for an injury or illness pursuant to both this part and the Workers' Compensation Law, compiled in chapter 6 of this title, then the payments of workers' compensation shall be reimbursed from compensation paid under this part.

(d) The provisions of this part shall apply to all public employees.

SECTION 2. This act shall take effect July 1, 2014, the public welfare requiring it.