

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
38 directly experience health-endangering workplace bullying,
39 abuse, and harassment, and this mistreatment is approximately
40 four times 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
48 consequences for employers, including reduced employee
49 productivity and morale, higher turnover and absenteeism rates,
50 and increases in 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
 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
 64 harmed 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 sections 448.30, 448.31, 448.32, 448.33, 448.34,
 70 448.35, 448.36, and 448.37, is created to read:

71 PART III

72 ABUSIVE WORK ENVIRONMENTS

73 448.30 Definitions.—As used in this part, the term:

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

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83 single act normally will not constitute abusive conduct, but an
84 especially severe and egregious act may be found to meet this
85 standard.

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

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

94 (4) "Constructive discharge" exists where:

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

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

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

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

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

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

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

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

112 448.31 Unlawful employment practices.—

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

115 (2) It is an unlawful employment practice under this part
116 to retaliate in any manner against an employee who has opposed
117 any unlawful employment practice under this part or who has made
118 a charge, testified, assisted, or participated in any manner in
119 an investigation or proceeding under this part, including, but
120 not limited to, internal complaints and proceedings, arbitration
121 and mediation proceedings, and legal actions.

122 448.32 Employer liability and defense.—

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

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

128 (a) The employer exercised reasonable care to prevent and
129 promptly correct any actionable behavior; and

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

133 448.33 Employee liability and defense.—

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

136 (2) It is an affirmative defense for an employee only that
137 the employee committed an unlawful employment practice at the

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138 direction of the employer under threat of an adverse employment
139 action.

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

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

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

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

149 448.35 Relief.—

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

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

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166 448.36 Procedures.—

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

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

173 448.37 Effect on other legal relationships.—The remedies
174 provided in this part are in addition to any remedies provided
175 under any other law, and nothing in this part relieves a person
176 from any liability, duty, penalty, or punishment provided by any
177 other law, except that if an employee receives workers'
178 compensation for medical costs for the same injury or illness
179 under this part and chapter 440, or compensation under this part
180 and chapter 440 in cash payments for the same period of time of
181 not working as a result of the compensable injury or illness or
182 the unlawful employment practice, all compensation received
183 under chapter 440 shall be reimbursed from compensation paid
184 under this part.

185 Section 4. Subsection (16) is added to section 1002.42,
186 Florida Statutes, to read:

187 1002.42 Private schools.—

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

193 Section 5. Subsection (7) is added to section 1006.07,

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194 Florida Statutes, to read:

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

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

204 Section 6. This act shall take effect July 1, 2013.