

2018 -- S 2471 SUBSTITUTE A

LC004443/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- HEALTHY WORKPLACE

Introduced By: Senators Ciccone, Calkin, Goldin, Euer, and Nesselbush

Date Introduced: February 15, 2018

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 52.1

4 THE HEALTHY WORKPLACE ACT OF 2018

5 **28-52.1-1. Short title.**

6 This act shall be known and may be cited as "The Healthy Workplace Act of 2018".

7 **28-52.1-2. Definitions.**

8 (a) For the purposes of this chapter:

9 (1) "Abusive conduct" means and includes acts, omissions, or both, that a reasonable
10 person would find abusive based on the severity, nature, and frequency of the conduct. Abusive
11 conduct may include, but is not limited to:

12 (i) Repeated verbal abuse such as the use of derogatory remarks, insults, epithets;

13 (ii) Verbal, or nonverbal, or physical conduct of a threatening, intimidating, or
14 humiliating nature; or

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

16 (iv) Sexual harassment as defined in § 28-51-1(b).

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

1 (2) "Abusive work environment" means and exists when an employer or one or more of
2 its employees, acting with intent to cause pain and distress to an employee, subjects that
3 employee to abusive conduct that causes physical and/or, psychological harm.

4 (3) "Adverse employment action" means and includes, but is not limited to, a termination,
5 demotion, unfavorable reassignment, failure to promote, disciplinary action, or reduction in
6 compensation.

7 (4) "Constructive discharge" means and shall be considered a termination, and therefore,
8 and adverse employment action within the meaning of this chapter. A constructive discharge for
9 purposes of this chapter exists where:

10 (i) The employee reasonably believed they were subjected to an abusive work
11 environment;

12 (ii) The employee resigned because of that conduct; and

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

15 (5) "Physical harm" means the impairment of a person's physical health or bodily
16 integrity, as established by competent evidence.

17 (6) "Psychological harm" means the impairment of a person's mental health, as
18 established by competent evidence.

19 **28-52.1-3. Unlawful employment practices.**

20 (a) It shall be an unlawful employment practice under this chapter to subject an employee
21 to an abusive work environment as defined in § 28-52.1-2.

22 (b) It shall be an unlawful employment practice under this chapter to retaliate in any
23 manner against an employee who has opposed any unlawful employment practice under this
24 chapter, who has made a charge, testified, assisted, or who has participated in any manner in an
25 investigation or proceeding under this chapter, including, but not limited to, internal complaints
26 and proceedings, arbitration and mediation proceedings, and legal actions.

27 **28-52.1-4. Employer liability and defense.**

28 (a) An employer shall be vicariously liable for any unlawful employment practice
29 committed by their employee.

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

32 (1) The employer exercised reasonable care to prevent and promptly correct any
33 actionable behavior; and

34 (2) The complainant employee unreasonably failed to take advantage of appropriate

1 preventive or corrective opportunities provided by the employer.

2 **28-52.1-5. Employee liability and defense.**

3 (a) An employee may be individually liable for an unlawful employment practice as
4 defined by this chapter.

5 (b) It shall be an affirmative defense for an employee only that the employee committed
6 an unlawful employment practice as defined by this chapter at the direction of the employer,
7 under actual or implied threat of an adverse employment action.

8 **28-52.1-6. Affirmative defenses.**

9 It shall be an affirmative defense that:

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

12 (2) The complaint is based on reasonable performance evaluation; or

13 (3) The complaint is based on an employer's reasonable investigation about potentially
14 illegal or unethical activity.

15 **28-52.1-7. Relief and limitations on employer liability.**

16 (a) Relief generally. Where a party is liable for an unlawful employment practice under
17 this chapter, the court may enjoin the defendant from engaging in the unlawful employment
18 practice, and may order any other relief that is deemed appropriate, including, but not limited to,
19 reinstatement, removal of the offending party from the complainant's work environment, back
20 pay, front pay, medical expenses, compensation for pain and suffering, compensation for
21 emotional distress, punitive damages, and attorneys' fees.

22 (b) Limitations on employer liability. Where an employee is liable for an unlawful
23 employment practice under this chapter that did not include an adverse employment action,
24 emotional distress damages and punitive damages may be awarded only when the actionable
25 conduct was extreme and outrageous. This limitation does not apply to individually named
26 employee defendants.

27 **28-52.1-8. Private right of action.**

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

29 (b) An action under this chapter must be commenced not later than one year after the last
30 act that constitutes the alleged unlawful employment practice.

31 **28-52.1-9. Effect on other legal relationships.**

32 (a) This chapter does not supersede any rights and obligations provided under collective
33 bargaining laws and regulations.

34 (b) The remedies provided in this chapter shall be in addition to any remedies provided

1 under any other law, and nothing in this chapter shall relieve any person from any liability, duty,
2 penalty or punishment provided by any other law, except that if an employee receives workers'
3 compensation for medical costs for the same injury or illness pursuant to both this chapter and the
4 workers' compensation law, or compensation under both this chapter and that law in cash
5 payments for the same period of time not working as a result of the compensable injury or illness
6 or the unlawful employment practice, the payment of workers' compensation shall be reimbursed
7 from the compensation paid under this chapter.

8 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- HEALTHY WORKPLACE

1 This act would create the "Healthy Workplace Act of 2018" and would establish a cause
2 of action against employers and employees for workplace bullying, harassment and other abusive
3 conduct that is tolerated by employers and which may not fall into other categories already
4 protected such as race, color and sex or sexual orientation.

5 This act would take effect upon passage.

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