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HOUSE BILL 2888

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Cody, Lovick, Stambaugh, Ryu, Goodman, Peterson, Sells, Blake, Bergquist, Gregerson, Pollet, and Stonier

1 AN ACT Relating to addressing workplace bullying by making it an  
2 unfair practice to subject an employee to an abusive work  
3 environment; adding a new section to chapter 49.60 RCW; and creating  
4 a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds and declares  
7 that:

8 (a) The social and economic well-being of the state is dependent  
9 upon healthy and productive employees;

10 (b) Surveys and studies have documented that: Approximately one  
11 in five employees directly experience health-endangering workplace  
12 bullying, and abusive work environments can have serious effects on  
13 targeted employees and serious consequences for employers; and

14 (c) Unless mistreated employees have been subjected to abusive  
15 treatment at work for unlawful discriminatory reasons, they are  
16 unlikely to have legal recourse.

17 (2) For these reasons, the legislature intends:

18 (a) To provide legal recourse for employees who have been harmed,  
19 psychologically, physically, or economically, by being deliberately  
20 subjected to abusive work environments; and

1 (b) To provide legal incentives for employers to prevent and  
2 respond to mistreatment of employees at work.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.60  
4 RCW to read as follows:

5 (1) It is an unfair practice under this chapter to subject an  
6 employee to an abusive work environment.

7 (2) It is an affirmative defense to an action for an abusive work  
8 environment that:

9 (a) The employer exercised reasonable care to prevent and  
10 promptly correct the abusive conduct and the aggrieved employee  
11 unreasonably failed to take advantage of appropriate preventive or  
12 corrective opportunities provided by the employer. The employer may  
13 demonstrate reasonable care by adopting employment policies  
14 prohibiting abusive conduct, providing educational materials on  
15 maintaining nonabusive work environments and establishing effective  
16 enforcement procedures. This defense is not available when the  
17 abusive conduct culminates in a negative employment decision; or

18 (b) The complaint is grounded primarily upon a negative  
19 employment decision made consistent with an employer's legitimate  
20 business interests, such as a termination or demotion based on an  
21 employee's poor performance, or the complaint is grounded primarily  
22 upon an employer's reasonable investigation of potentially illegal or  
23 unethical activity.

24 (3) For purposes of this section:

25 (a) "Abusive conduct" is repeated conduct of an employer or  
26 employee in the workplace, that a reasonable person would find  
27 hostile, offensive, and unrelated to an employer's legitimate  
28 business interests. In considering whether abusive conduct is  
29 present, a trier of fact should weigh the severity, nature, and  
30 frequency of the conduct. Abusive conduct may include, but is not  
31 limited to, infliction of verbal abuse such as the use of derogatory  
32 remarks, insults, and epithets; verbal or physical conduct that a  
33 reasonable person would find threatening, intimidating, humiliating,  
34 or isolating; or the gratuitous sabotage or undermining of a person's  
35 work performance. A single act normally will not constitute abusive  
36 conduct, unless especially severe and egregious.

37 (b) "Abusive work environment" is a workplace where an employee  
38 is subjected to abusive conduct that is so severe that it causes  
39 physical, psychological, or economic harm to the employee.

1 (c) "Constructive discharge" is abusive conduct: (i) Which causes  
2 the employee to resign; (ii) where, prior to resigning, the employee  
3 brings to the employer's attention the existence of the abusive  
4 conduct; and (iii) which the employer fails to take reasonable steps  
5 to eliminate.

6 (d) "Economic harm" is the material impairment of a person's  
7 economic stability, including ones ability to earn income or secure  
8 employment opportunities, as documented by a competent physician,  
9 psychiatrist, psychotherapist, or psychologist, or supported by  
10 competent expert evidence at trial.

11 (e) "Negative employment decision" is a termination, constructive  
12 discharge, demotion, unfavorable reassignment, refusal to promote, or  
13 disciplinary action.

14 (f) "Physical harm" is the material impairment of a person's  
15 physical health or bodily integrity, as documented by a competent  
16 physician or supported by competent expert evidence at trial.

17 (g) "Psychological harm" is the material impairment of a person's  
18 mental health, as documented by a competent psychologist,  
19 psychiatrist, or psychotherapist, or supported by competent expert  
20 evidence at trial.

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