

2023 -- S 0821 SUBSTITUTE A

LC002613/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKPLACE PSYCHOLOGICAL SAFETY ACT

Introduced By: Senators Ciccone, Britto, DiPalma, F. Lombardi, Burke, and Tikoian

Date Introduced: March 23, 2023

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 RELATIONS"  
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 60

4 WORKPLACE PSYCHOLOGICAL SAFETY ACT

5 **28-60-1. Short title.**

6 This chapter shall be known and may be cited as the "Workplace Psychological Safety  
7 Act."

8 **28-60-2. Public policy.**

9 (a) This chapter sets forth a public policy acknowledging and addressing the relevance and  
10 importance of mental health as an integral aspect of human well-being, and therefore, employee  
11 well-being. This chapter also sets forth a public policy against any type of psychological abuse that:

12 (1) Violates an employee's right to a physically and psychologically safe work  
13 environment; and

14 (2) Injures an employee, hinders the performance of an employee, stigmatize the employee,  
15 and/or undermine the dignity of the employee.

16 (b) This chapter declares and reasserts the obligation of employers to keep their employees  
17 and the work environment safe as set forth in laws throughout the state and the federal government,  
18 including the Department of Labor Standards, a part of the Executive Office of Labor and

1 Workforce Development, U.S. Department of Labor and the U.S. Occupational Safety and Health  
2 Act, which includes psychological safety.

3 **28-60-3. Purpose.**

4 It is the purpose of this chapter to:

5 (1) Recognize and protect an employee's right not only to a physically safe work  
6 environment but also to a psychologically safe work environment in the workplace.

7 (2) Recognize and promote an employer's responsibility to acknowledge, monitor, prevent,  
8 discourage, and adequately address issues of psychological abuse in the workplace.

9 (3) Provide legal incentive for employers to acknowledge, monitor, prevent, discourage,  
10 and adequately address issues of psychological abuse to eliminate such behaviors before they  
11 disrupt the safety of the work environment and/or cause subsequent harm to employees.

12 (4) Provide legal relief and remedy for employees harmed psychologically, emotionally,  
13 physically, professionally, or economically by exposure to an unsafe, toxic work environment,  
14 including any subsequent damages to make employees whole.

15 **28-60-4. Scope of application.**

16 This chapter shall apply to all employees regardless of the nature of their job.

17 **28-60-5. Definitions.**

18 For the purposes of this chapter, the terms used herein shall have the meanings set forth in  
19 this section:

20 (1) "Bullying" means interpersonal abuse that operates employee(s)-to-employee(s),  
21 especially superior(s) to subordinate(s).

22 (2) "Mobbing" means an interpersonal abuse system that operates employer-to-  
23 employee(s).

24 (3) "Physical injury" means impairment of a person's physical health or bodily integrity as  
25 established by competent evidence and may manifest mentally, emotionally, or physically.

26 (4) "Psychological abuse" means mentally provocative harassment. Mistreatment that has  
27 the effect of hurting, weakening, confusing, or frightening a person mentally or emotionally.

28 (5) "Psychological injury" means impairment of a person's mental health as established by  
29 competent evidence and may manifest mentally, emotionally, or physically.

30 (6) "Reasonable person" means an unbiased person who displays reason, fairness, caution,  
31 and care.

32 (7) "Representative employee" means administrative employees in leadership and/or  
33 management positions whose responsibility is to oversee and enforce organizational policies  
34 including, but not limited to, CEOs, CFOs, presidents, vice presidents, executive directors,

1 members of a board of directors, or employees in human resources, legal, or diversity, equity, and  
2 inclusion.

3 (8) "Third party" means a neutral person with no prior affiliation with the parties.

4 (9) "Toxic work environment" means an intolerable employment condition in which a  
5 reasonable person would find it difficult, uncomfortable, and/or an impossible environment to  
6 perform their workplace duties and tasks.

7 **28-60-6. Employee right to dignity and a psychologically safe work environment.**

8 Every employee shall have the right to a work environment that is safe and affords them  
9 the dignity to which all human beings are entitled, free from all forms of psychological abuse.

10 **28-60-7. Employer responsibility to provide safe work environments and ensure**  
11 **worker dignity.**

12 Employers have a general duty to provide a safe work environment free from all forms of  
13 abuse including psychological abuse. Employers have a general duty to ensure that all employees  
14 are treated respectfully and with dignity.

15 **28-60-8. Prohibited activity.**

16 (a) It shall be an unlawful employment practice for any employer or employee to engage  
17 in the psychological abuse of another employee that creates a toxic work environment in which a  
18 reasonable person would find intolerable to perform their regular workplace duties and tasks, has  
19 the ability to cause injury, and/or jeopardizes future career prospects without just cause. The  
20 determination of which shall be conducted from the view of a reasonable person under the totality  
21 of the circumstances, its impact on the work environment of the employee, and/or its subsequent  
22 impact on the employee's well-being.

23 (b) It shall be an unlawful employment practice to retaliate in any manner against an  
24 employee who has opposed any unlawful employment practices under this chapter, including, but  
25 not limited to, filing a claim internally or externally on behalf of oneself or another objecting to  
26 behavior in violation of this chapter whether as a complainant, witness, or advocate.

27 (c) It shall be an unlawful employment practice to require any complainant under this  
28 chapter to enter into mediation or forced arbitration.

29 (d) Conduct that does not constitute psychological abuse includes, but is not limited to:

30 (1) Acts intended to exercise a supervisor's authority to discipline with just cause and  
31 conducted in a progressive disciplinary manner in compliance with policies and laws;

32 (2) Demands for protecting the confidentiality of the services provided by the employer;

33 (3) The formulation or promulgation of regulations or memoranda to direct the operations,  
34 maximize efficiency, and evaluate employees' performance based on the general objectives of the

1 employer;

2 (4) The temporary assignment of additional duties when necessary to ensure the continuity  
3 of services;

4 (5) Administrative actions directed to the completion of an employment agreement, with  
5 cause; and

6 (6) Employer's affirmative actions to enforce the provisions of a human resources  
7 regulation, clauses of employment agreements, or obligations, duties, and prohibitions established  
8 by law.

9 (e) Concerted activity/Section 7 activity under the National Labor Relations Act as  
10 interpreted by the National Labor Relations Board shall not be construed as psychological abuse.

11 **28-60-9. Procedure.**

12 (a) Every employer shall be responsible for taking all reasonable measures to acknowledge,  
13 monitor, prevent, discourage, and adequately address incidents of psychological abuse.

14 (b) Within one hundred eighty (180) days every employer shall:

15 (1) Adopt and implement preventive and detective internal policies against psychological  
16 abuse, including anti-retaliation policies, consistent with this chapter. Policies should include a  
17 broad reporting procedure, including formal and informal reporting methods.

18 (2) Notify and train all managers, supervisors, and other representative employees as to  
19 handling complaints of psychologically abusive behavior, including the employer's reporting  
20 provisions and policies to acknowledge, monitor, prevent, discourage and adequately address all  
21 such complaints.

22 (3) Post employees' rights under this chapter and employer reporting policies in such a  
23 manner that all employees have access, including on the website, bulletin boards, job descriptions,  
24 and in applicable promotional materials.

25 (4) Implement and uphold an effective anti-retaliation provision that guarantees no  
26 retaliation against any employee who has opposed any unlawful practice in a complaint under this  
27 chapter.

28 (5) Implement an investigation policy for all complaints of psychologically abusive  
29 behavior which includes notice provisions for complainant regarding the status, completion, and  
30 outcome of the complaint and imposes a policy of progressive discipline for any employee  
31 determined to have engaged in psychologically abusive behavior.

32 (6) Apply evaluation and discipline processes evenly and fairly to all employees.

33 (7) Annually perform an anonymous workplace climate survey, with its results to be  
34 submitted to OSHA (private sector employers) and the department of labor and training (public

1 sector employers) annually.

2 (8) Report annually the number of employee complaints of abusive behavior, employee  
3 disciplines, workers' compensation claims, absenteeism rates, stress leave rates, attrition rates,  
4 discrimination complaints, investigation rates, follow up action rates, the workforce gender and  
5 racial makeup, and de-identified wage and salary data by protected category to OSHA (private  
6 sector employers) and department of labor and training (public sector employers), who will make  
7 this information publicly available, at a minimum under the Freedom of Information Act.

8 (c) If the employer proves to have exercised reasonable care to prevent and promptly  
9 correct the conduct, such employer shall be held harmless from any claim under the provisions of  
10 this chapter.

11 (d) The aggrieved employee shall have the following options to notify the employer of the  
12 complaint without use of the employer's protocol:

13 (1) File a complaint (the employer will not receive a copy of the complaint until there is  
14 litigation) that discloses the complainant's identity directly and only to OSHA (private sector  
15 employees) or the department of labor and training (public sector employees). These offices shall:

16 (i) Evaluate the conditions described in the complaint.

17 (ii) If it is determined that the complaint describes a potential OSHA violation, the case is  
18 assigned to an inspector.

19 (iii) Contact the employer in writing and require the employer to respond by a due date  
20 with proof that the hazard has been corrected; or make an appointment for a site visit prioritized  
21 according to the nature of the hazard; or phone or visit the workplace the same day if there is  
22 imminent danger. Issue fines and/or penalties, including legal action, to violators.

23 (iv) Make violations of this chapter available to the public per the Freedom of Information  
24 Act, redacting all private information as to the aggrieved employee, including their name to protect  
25 their privacy and not interfere with future job prospects.

26 (v) If applicable, forward the complaint to another agency with jurisdiction.

27 (vi) Collect and maintain data on the effectiveness of this chapter as determined by a  
28 decrease in employees self-reporting experiencing psychological abuse at work.

29 (2) File suit against the employer for violation(s) of this chapter directly through the  
30 judicial branch.

31 **28-60-10. Employer liability.**

32 Any employer that allows, engages in, or promotes psychological abuse whereby creating  
33 a toxic work environment shall be liable to the affected employee(s).

34 Every employer shall:

1 (1) Be liable for failing to take the appropriate measures to provide employees with a  
2 psychologically safe work environment as outlined in this chapter.

3 (2) Be liable for engaging in any violation of this chapter.

4 (3) Be liable for any damages, including economic, compensatory, and punitive damages,  
5 to any employee who has been subjected to work in a toxic work environment as outlined in this  
6 chapter in the scope of their employment unless the employer can demonstrate they have met all  
7 elements of the affirmative defense provided in § 28-60-12. An employee is entitled to recover the  
8 greater of all actual damages or five thousand dollars (\$5,000) for each violation of this chapter.

9 (4) If not prevailing, be liable for the plaintiff's reasonable attorneys' and witnesses' fees  
10 and costs.

11 **28-60-11. Scope of the protection.**

12 (a) Any person who reports psychological abuse shall be protected by this chapter.

13 (b) No person shall aid, abet, incite, compel, or coerce the doing of an act forbidden under  
14 this chapter or to attempt to do so.

15 (c) No employer shall terminate, sanction, mislead, coerce, intimidate, threaten, interfere  
16 with, discriminate against, or otherwise retaliate against any person in the opposition of unlawful  
17 employment practices or exercise of any right under this chapter, including, but not limited to, an  
18 employee as to the terms, conditions, compensation, location, benefits, or privileges of employment  
19 because the employee or witness offers or attempts to offer, verbally or in writing, any testimony,  
20 statement, information, or claim to a labor union, human resources office, employer office,  
21 legislative, administrative, or judicial forum, or any other internal or external office or otherwise  
22 engages in any other reasonable participation in a claim under this chapter insofar as such  
23 statements constitute a disclosure of privileged information as provided by law.

24 (d) The employee shall show proof of the violation through direct and circumstantial  
25 evidence.

26 (e) The employee may bring a prima facie case of violation of the law by proving they  
27 reported an incident of workplace psychological abuse and was subsequently terminated,  
28 threatened, or discriminated against in their employment. Once the prima facie case is established,  
29 the employer may allege and provide a legitimate and nondiscriminatory ground for the  
30 termination. If the employer alleges and provides such grounds, the employee shall show that the  
31 grounds alleged by the employer was a mere pretext for termination.

32 **28-60-12. Affirmative defense.**

33 (a) An employer may establish an affirmative defense to limit damages for psychological  
34 abuse under this chapter where the employer took all steps outlined in this chapter to acknowledge,

1 monitor, prevent, discourage, and adequately address the issues and complaints surrounding  
2 allegations of psychological abuse and exercised reasonable care to prevent and promptly correct  
3 any violation in this chapter or acted with just cause.

4 (b) Because this chapter requires employers to take all reasonable necessary steps to  
5 adequately address complaints of psychological abuse, an employer shall not be exempt from  
6 liability if the employer or its representative employees or supervisors knew or should have known  
7 of said conduct and failed to acknowledge, monitor, prevent, discourage, or address the allegations  
8 of psychological abuse and promptly correct the situation.

9 (c) This defense shall not be available when the employer or its representative employees  
10 or supervisors engage in this conduct.

11 **28-60-13. Remedies.**

12 Complainants who prove a violation of this chapter shall be entitled to all remedies  
13 necessary to make such complainants whole. Such remedies shall factor whether a toxic work  
14 environment existed and/or whether or not injury resulted:

15 (1) An apology to the complainant employee and mandatory training and/or coaching  
16 and/or counseling and/or discipline for violators of this chapter who remain with the employer ;

17 (2) Reinstatement of work;

18 (3) Economic damages for lost wages;

19 (4) Expenses related to treatment related to the psychological abuse including future  
20 medical expenses for psychological injury or resulting physical injury;

21 (5) Compensable damages to compensate for the resulting pain and suffering and emotional  
22 and psychological damages;

23 (6) Punitive damages to deter future acts of psychological abuse;

24 (7) Injunctive relief whereby the court may enjoin the defendant from engaging in the  
25 unlawful employment practice;

26 (8) Public notification of the case outcome without disclosing the plaintiff's name if desired  
27 by the plaintiff;

28 (9) Attorneys' fees for the prevailing plaintiff; and

29 (10) Any other relief deemed appropriate, including restorative measures, including  
30 modification of the disciplinary record of the employee and/or organizational training.

31 **28-60-14. Statute of limitations.**

32 Any person who has a cause of action under the provisions of this chapter shall have the  
33 later of a period of three (3) years to file said cause of action from the last alleged psychologically  
34 abusive behavior from the employee with OSHA, or the department of labor and training, or a

1 private cause of action. If a claimant files a complaint with OSHA or the department of labor and  
2 training, the statute of limitations for filing a private cause of action is tolled.

3 **28-60-15. Severability clause.**

4 If any clause, paragraph, subparagraph, article, provision, section, or part of this chapter  
5 are held to be unconstitutional or void, the holding to such effect shall not affect, impair, or  
6 invalidate the remainder of this chapter. The effect of said holding shall be limited solely to the  
7 clause, paragraph, subparagraph, article, provision, section, or part thereof thus held to be  
8 unconstitutional or void.

9 **28-60-16. Conflict with laws.**

10 (a) Nothing in this chapter should limit employee rights under any other law including the  
11 OSH Act, laws under state-level OSHA agencies or their equivalent, Title VII of the Civil Rights  
12 Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, state EEO  
13 laws, the National Labor Relations Act (NLRA), and state labor rights laws.

14 (b) Nothing under this chapter shall restrict workers from negotiating broader protections  
15 via collective bargaining or other concerted activity.

16 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 -- WORKPLACE PSYCHOLOGICAL  
SAFETY ACT

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1           This act would prohibit any type of psychological abuse in the workplace inflicted by an  
2 employer upon an employee or by a co-employee upon an employee that results in the violation of  
3 an employee's right to a physically and psychologically safe work environment.

4           This act would also provide an employee subject to bullying, psychological abuse,  
5 psychological injury and/or physical injury with protections in the workplace and civil remedies  
6 against perpetrators of any prohibited activity. This act also would assess civil penalties upon  
7 employers violating the act based upon the gross amount of revenues earned by employers in  
8 addition to civil liability for damages sustained by the employee as well as civil and criminal  
9 liability for any such conduct of a co-employee.

10           This act would take effect upon passage.

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