

LC003684

IN GENERAL ASSEMBLY

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

Referred To: Senate Labor & Gaming

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR RELATIONS"

2 is hereby amended by adding thereto the following chapter:

WORKPLACE PSYCHOLOGICAL SAFETY ACT

6 It is the purpose of this chapter to ensure the psychological safety of employees and/or the
7 work environment without regard to protected class status by holding employers accountable for
8 bullying conduct.

10 For the purposes of this chapter, the following words and phrases shall have the following
11 meanings:

12 (1) “Employee” means any person who renders services to an employer, contractor, or any
13 other entity and receives compensation for those services, including full- and part-time paid
14 employees, temporary employees, contracted employees, and independent contractors.

(2) “Employer” means a person or entity of any size who obtains services from a full- or part-time paid employee, temporary employee, contracted employee, or independent contractor and hires at least one employee for any compensation. This chapter applies to employers with a minimum of fifteen (15) employees only.

1 (3) “Representative employee” means an employee in a leadership, management, or legal
2 position whose responsibility is to advise on, oversee, and/or enforce organizational policies.

3 **28-61-3. Workplace bullying regulation.**

4 (a) Workplace bullying shall be unlawful. Workplace bullying is unwelcome, degrading,
5 and dehumanizing conduct, that is severe or pervasive enough to create a work environment that a
6 reasonable person would consider threatening, hostile, or abusive and that unreasonably interferes
7 with the target’s ability to perform job duties. Conduct may include false accusations, sabotage of
8 work performance, consistent ignoring or ostracism, removal of major responsibilities, consistent
9 unreasonable workloads, excessive monitoring, consistent micromanagement, persistent
10 hypercriticism, impossible deadlines, pressure to engage in unethical behavior or give up rights or
11 benefits, retaliation for speaking up, or repeated verbal abuse. Isolated, minor incidents, expressions
12 of disagreement, and constructive feedback are not bullying unless they meet the severe or
13 pervasive standard. Workplace bullying may be perpetrated by one or more persons. Workplace
14 bullying is found by a review of the totality of the circumstances including, but not limited to, the
15 nature, frequency, and duration of the conduct.

16 (b) Employers and representative employees shall take all reasonable preventative and
17 responsive measures to provide safe work environments free from bullying by:

18 (1) Acknowledging and responding to complaints of bullying within a reasonable time
19 frame appropriate to the level of urgency;

20 (2) Providing and executing a transparent, timely complaint process that includes a
21 legitimate, fair, fact-finding investigation and the issuance of timely and accurate reports of
22 findings;

23 (3) Providing and executing a transparent disciplinary process according to the severity of
24 the offense within a reasonable time frame, if applicable including, but not limited to: coaching,
25 counseling, a warning, or other disciplinary action, including removal of supervisory duties and/or
26 termination;

27 (4) Maintaining accurate records of complaints, findings, and discipline;

28 (5) Writing, distributing, posting, and otherwise providing a written preventative policy
29 against all forms of bullying, to include an anti-retaliation policy and an identification and
30 description of all reporting methods, consistent with this section and all other laws within ninety
31 (90) days. Such policies shall be distributed to employees on a regular basis; and

32 (6) Training all employees on such preventative and reporting policies. It shall be
33 considered an affirmative defense for an employer to take prompt, good-faith steps to address
34 alleged bullying with a threshold of evidence.

1 (c) It shall be unlawful for an employer or representative employee to:

2 (1) Mandate mediation and/or arbitration of a bullying complaint prior to the employee's
3 retaining of counsel. Voluntary mediation with both parties' consent may be permitted only when
4 employees understand their rights before entering mediation and can consult with legal aid
5 organizations if they cannot afford an attorney. Employers shall be prohibited from requiring
6 arbitration as a condition of employment or filing a complaint;

7 (2) Mandate, offer, or use a non-disclosure or non-disparagement agreement related to a
8 bullying complaint; and/or

9 (3) Engage in an adverse employment action. An adverse employment action occurs when
10 an employee opposes an unlawful employment practice and/or exercises a right under this section
11 and is then the target of forced resignation, termination, demotion, unfavorable reassignment,
12 failure to promote, disciplinary action, reduction in compensation, constructive discharge, or a
13 similar action.

14 (d) A violation or violations of any provisions of this section can be enforced by a private
15 right of action against an individual employee and/or employer in violation of this chapter.

16 **28-61-4. Damages.**

17 (a) Complainants who prove a violation of § 28-61-3 or any of its subsections or divisions
18 thereof shall be entitled to all remedies necessary to make such complainants whole. Remedies
19 shall include, but not be limited to:

20 (1) Compensatory damages to include economic (back pay and front pay and/or related
21 medical expenses) and non-economic (pain, suffering, and/or distress); and

22 (2) Punitive damages when a violation is extreme and/or egregious;

23 (3) Injunctive relief whereby the court may enjoin the defendant from engaging in the
24 unlawful employment practice and may order any other relief deemed appropriate (reinstatement
25 of work and/or removal of the bullying employee from the complainant's work environment and/or
26 removal of supervisory duties or termination of said employee); and

27 (4) Restorative measures (correction of reputational damage including false statements
28 made, the disciplinary record, and/or performance evaluations of the complainant and/or public
29 notification of the case without disclosing the plaintiff's name if desired by the plaintiff).

30 (b) In instances where the employer violates §§ 28-61-3(b)(5) and/or 28-61-3(b)(6), the
31 penalty shall not exceed one hundred dollars (\$100) for each offense.

32 (c) In all other instances, the complainant shall receive the greater of all damages as
33 identified in subsection (b) of this section or five thousand dollars (\$5,000) per violation of §§ 28-
34 61-3(a), 28-61-3(b) and or 28-61-3(c) for a maximum of fifteen thousand dollars (\$15,000).

1 (d) The at-fault party shall pay the plaintiff's reasonable attorneys' fees and costs. A
2 prevailing employer shall not be awarded fees and costs.

3 **28-61-5. Employee rights.**

4 (a) Any person who has a cause of action under the provisions of this chapter shall have a
5 period of three (3) years after the last violation of § 28-61-3 to file said cause of action.

6 (b) A pseudonym can be used in cases where the plaintiff can demonstrate a credible risk
7 of retaliation or harm at the plaintiff's request, subject to the court's approval.

8 **28-61-6. Review.**

9 A regulatory review of this chapter is required five (5) years after the effective date of this
10 chapter to be performed by the department of labor and training.

11 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

1 This act would establish the workplace psychological safety act to provide protection for
2 employees from workplace psychological abuse (bullying) by requiring employers and
3 representative employees to take all reasonable steps to prevent workplace bullying and respond
4 appropriately thereto. This act would also provide a cause of action for employees to pursue
5 injunctive relief and/or actual and punitive damages.

6 This act would take effect upon passage.

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