

2014 -- H 7276

=====
LC003789
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

—————
A N A C T

RELATING TO LABOR AND LABOR RELATIONS - ABUSIVE WORK ENVIRONMENT
PREVENTION ACT

Introduced By: Representatives Guthrie, Williams, Edwards, Hull, and Johnston

Date Introduced: January 30, 2014

Referred To: House 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 56

4 THE ABUSIVE WORK ENVIRONMENT PREVENTION ACT

5 **28-56-1. Declaration of policy. –** The social and economic well-being of the state of
6 Rhode Island is dependent on healthy and productive employees. The harassment and abuse of
7 employees in the workplace is more prevalent than sexual harassment. Such harassment can
8 inflict serious harm upon targeted employees such as feelings of shame and humiliation, severe
9 anxiety, depression, suicidal tendencies, impaired immune systems, hypertension, increased risk
10 of cardiovascular disease, and symptoms consistent with post-traumatic stress disorder. Abusive
11 work environments can have serious consequences for employers including reduced employee
12 productivity and morale, higher turnover and absenteeism rates, and increases in medical and
13 worker compensation claims. If mistreated employees who have been subjected to abusive
14 treatment at work cannot establish that the behavior was motivated by race, creed, color, age,
15 marital status, familial status, physical or mental disability, or national origin, they are unlikely to
16 be protected by the law against such treatment. Legal protection from abusive work environments
17 should not be limited to behavior grounded in protected class status as that provided by
18 employment discrimination statutes.

1 **28-56-2. Definitions.** – The following words and phrases, as used in this chapter shall
2 have the following meanings:

3 (1) "Abusive conduct" means employees acts, omissions, or both, that a reasonable
4 person would find hostile, based on the severity, nature, and frequency of the employee's conduct,
5 including, but not limited to: repeated infliction of verbal abuse such as the use of derogatory
6 remarks, insults, and epithets; verbal or physical conduct of a threatening, intimidating, or
7 humiliating nature; sabotage or undermining of an employee's work performance; or attempts to
8 exploit an employee's known psychological or physical vulnerability. Normally, no single act
9 shall constitute abusive conduct, but an especially severe and egregious act may meet this
10 standard.

11 (2) "Abusive work environment" means an employment condition where any employee,
12 acting with malice, subjects another employee to abusive conduct so severe that it causes tangible
13 harm.

14 (3) "Adverse employment action" means an outcome which negatively affects an
15 employee. Such outcomes include, but shall not be limited to, termination, constructive discharge,
16 demotion, unfavorable reassignment, failure to promote, disciplinary action, or reduction in
17 compensation.

18 (4) "Constructive discharge" means an employee:

19 (i) Reasonably believed he or she was subjected to abusive conduct;

20 (ii) Resigned because of that abusive conduct; and

21 (iii) Prior to resigning, brought to the employer's attention the existence of the abusive
22 conduct, and the employer failed to take reasonable steps to correct the situation.

23 (5) "Employee" means a person employed by any employer, and shall include, but not be
24 limited to, at-will employees, contract employees, and independent contractors.

25 (6) "Employer" means any person, partnership, association, sole proprietorship,
26 corporation, or other business entity, including any department, agency, commission, committee,
27 board, council, bureau, or authority or any subdivision thereof in state or municipal government,
28 who shall employ another if services are performed for wages or under any contract of hire,
29 written or oral, express or implied.

30 (7) "Malice" means the desire to cause pain, injury, or distress to another.

31 (8) "Physical harm" means the material impairment of a person's physical health or
32 bodily integrity as established by competent evidence.

33 (9) "Psychological harm" means the material impairment of a person's mental health, as
34 established by competent evidence.

1 (10) "Tangible harm" means psychological harm or physical harm.

2 **28-56-3. Abusive work environment.** – (a) No employer or employee shall subject
3 another employee to an abusive work environment.

4 (b) No employer or employee shall retaliate in any manner against an employee who has
5 complained of an abusive work environment under this chapter, or who has made a charge,
6 testified, assisted, or participated in any manner in an investigation or proceeding under this
7 chapter, including, but not limited to, internal complaints and proceedings, arbitration, and
8 mediation proceedings, and legal actions.

9 **28-56-4. Liability.** – (a) An employer shall be vicariously liable for a violation of this
10 chapter by its employee.

11 (b) Where the alleged abusive work environment does not include an adverse
12 employment action, it shall be an affirmative defense for an employer only that:

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

15 (2) The complainant employee unreasonably failed to take advantage of appropriate
16 preventive or corrective opportunities provided by the employer.

17 (c) An employee may be individually liable for a violation of § 28-56-3.

18 (d) It shall be an affirmative defense for an employee only that the employee committed a
19 violation of § 28-56-3 at the direction of the employer, under threat of an adverse employment
20 action.

21 **28-56-5. Rights and remedies.** – (a) An employee or former employee shall commence
22 an action under this section no later than three (3) years after the last act that constitutes the
23 alleged violation of § 28-56-3.

24 (b) Any employee or former employee who alleges a violation of rights under § 28-56-3
25 and who has reported this behavior to his or her supervisor or higher level management without it
26 being resolved, may seek a private right of action or obtain a hearing with the director of the
27 department of labor and training or a designee appointed by the director.

28 (c) Following such hearing where an employee or employer has been found to have
29 violated § 28-56-3, the director or designee may enjoin that employer or employee from engaging
30 in the unlawful employment practice and may order any other relief that is deemed appropriate,
31 including, but not limited to, reinstatement, removal of the offending party from the
32 complainant's work environment, back pay, front pay, medical expenses, compensation for
33 emotional distress, and attorney's fees. Decisions rendered by the director under this section may
34 be appealed pursuant to the Administrative Procedures Act chapter 42-35 et al. The complainant

1 may also bring a civil action for damages or injunctive relief, or both, no later than three (3) years
2 after the last alleged violation occurred.

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

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

=====
LC003789
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - ABUSIVE WORK ENVIRONMENT
PREVENTION ACT

- 1 This act would establish the abusive work environment prevention act, which would
- 2 establish liability and remedies for creating an abusive work environment.
- 3 This act would take effect upon passage.

=====
LC003789
=====