
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1041 Session of
2015

INTRODUCED BY COHEN, BISHOP, FREEMAN, HARKINS, KINSEY, KIRKLAND,
KORTZ, O'BRIEN AND THOMAS, APRIL 21, 2015

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 21, 2015

AN ACT

1 Providing legal protections from abusive work environments and
2 for remedies.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Healthy
7 Workplace Act.

8 Section 2. Declaration of purpose.

9 The General Assembly finds and declares as follows:

10 (1) The purpose of this act is to provide legal redress
11 for employees who have been harmed psychologically,
12 physically or economically by deliberate exposure to abusive
13 work environments and to provide legal incentives for
14 employers to prevent and respond to abusive treatment of
15 employees at work.

16 (2) The social and economic well-being of this
17 Commonwealth is dependent upon healthy and productive
18 employees.

1 (3) At least one-third of all employees directly
2 experience health endangering workplace bullying, abuse and
3 harassment during their working lives.

4 (4) Workplace bullying, abuse and harassment is four
5 times more prevalent than sexual harassment alone.

6 (5) Workplace bullying, mobbing and harassment can
7 inflict serious harm upon targeted employees, including
8 feelings of shame and humiliation, severe anxiety,
9 depression, suicidal tendencies, impaired immune systems,
10 hypertension, increased risk of cardiovascular disease and
11 symptoms consistent with post-traumatic stress disorder.

12 (6) Abusive work environments can have serious
13 consequences for employers, including reduced employee
14 productivity and morale, higher turnover and absenteeism
15 rates and significant increases in medical and workers'
16 compensation claims.

17 (7) Legal protection from abusive work environments
18 should not be limited to behavior grounded in a protected
19 class status as required by the act of October 27, 1955
20 (P.L.744, No.222), known as the Pennsylvania Human Relations
21 Act.

22 (8) Existing workers' compensation provisions and tort
23 law are inadequate to discourage abusive work environments or
24 to provide adequate redress to employees who have been harmed
25 by abusive work environments.

26 Section 3. Definitions.

27 The following words and phrases when used in this act shall
28 have the meanings given to them in this section unless the
29 context clearly indicates otherwise:

30 "Abusive conduct." As follows:

1 (1) An act or omission intended to inflict and resulting
2 in physical or psychological injury, which is not injury
3 compensable under the act of June 2, 1915 (P.L.736, No.338),
4 known as the Workers' Compensation Act, if the injury
5 necessitates treatment by a qualified, licensed medical,
6 mental health or rehabilitative professional and is inflicted
7 by means of acts or omissions that a reasonable individual
8 would find abusive, based on the severity, nature and
9 frequency of the conduct, including, but not limited to:

10 (i) Repeated verbal abuse by the use of derogatory
11 remarks, insults and epithets.

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

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

16 (2) It shall be considered an aggravating factor if the
17 conduct exploited an employee's known psychological or
18 physical illness or disability.

19 (3) A single act normally shall not constitute abusive
20 conduct, but an especially severe and egregious act may meet
21 this standard.

22 "Abusive work environment." An employment condition when an
23 employer or one or more of its employees, acting with intent to
24 cause pain or distress to an employee, subjects an employee to
25 abusive conduct.

26 "Adverse employment action." Any materially and objectively
27 adverse reduction in terms, conditions or privileges of
28 employment, including, but not limited to:

29 (1) a termination, demotion, unfavorable reassignment or
30 failure to promote;

- 1 (2) disciplinary action; or
- 2 (3) reduction in compensation.

3 "Constructive discharge." An adverse employment action
4 where:

- 5 (1) the employee reasonably believes that he was
6 subjected to an abusive work environment;
- 7 (2) the employee resigns because of the abusive conduct;
8 and
- 9 (3) the employer was aware of the abusive conduct before
10 the employee's resignation and fails to respond to and
11 prevent the abusive conduct from recurring.

12 "Employee." A person who performs a service for wages or
13 other remuneration under a contract of hire, written or oral,
14 express or implied, for an employer. The term does not include:

- 15 (1) Any individual employed in agriculture or in the
16 domestic service of any person.
- 17 (2) An individual who, as a part of the individual's
18 employment, resides in the personal residence of the
19 employer.
- 20 (3) Any individual employed by the individual's parents,
21 spouse or child.

22 "Employer." Any person, partnership, association,
23 organization, corporation, legal representative, trustee in
24 bankruptcy or receiver employing another person within this
25 Commonwealth. The term includes the Commonwealth and any
26 political subdivision, authority, board or commission of the
27 Commonwealth. The term does not include religious, fraternal,
28 charitable or sectarian corporations or associations, except
29 those corporations or associations supported, in whole or in
30 part, by governmental appropriations.

1 "Physical injury." The impairment of an individual's
2 physical health or bodily integrity, as established by competent
3 evidence to the satisfaction of the court.

4 "Psychological injury." The impairment of an individual's
5 mental health, as established by competent evidence to the
6 satisfaction of the court.

7 Section 4. Abusive work environment.

8 (a) Prohibition.--An employee may not be subjected to an
9 abusive work environment by an employer or other employee.

10 (b) Retaliation prohibited.--An employer or employee may not
11 retaliate in any manner against an employee who has opposed an
12 unlawful employment practice under this act or who has made a
13 charge, testified, assisted or participated in any manner in an
14 investigation or proceeding under this act, including, but not
15 limited to, by:

- 16 (1) internal complaints and proceedings;
- 17 (2) arbitration and mediation proceedings; or
- 18 (3) legal actions.

19 Section 5. Employer liability.

20 An employer shall be liable for a violation of section 4
21 committed by its employee. If the alleged violation of section 4
22 does not include an adverse employment action, it shall be an
23 affirmative defense for an employer only that:

- 24 (1) the employer exercised reasonable care to promptly
25 prevent and correct any actionable behavior; and
- 26 (2) the complainant employee unreasonably failed to take
27 advantage of appropriate preventive or corrective
28 opportunities provided by the employer.

29 Section 6. Employee liability.

30 An employee may be individually liable for a violation of

1 section 4. It shall be an affirmative defense for an employee
2 only that the employee committed a violation of section 4 at the
3 direction of the employer, under actual or implied threat of an
4 adverse employment action.

5 Section 7. Affirmative defenses.

6 An affirmative defense shall be any of the following:

7 (1) The complaint is based on an adverse employment
8 action reasonably made for poor performance, misconduct or
9 economic necessity.

10 (2) The complaint is based on a reasonable performance
11 evaluation.

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

15 (4) The complaint is based on an action taken by the
16 employer which it was required by law to take.

17 Section 8. Remedies.

18 (a) Relief.--If a defendant has been found liable for a
19 violation of section 4, the court may enjoin the defendant from
20 engaging in the unlawful employment practice and may order any
21 other relief that is deemed appropriate, including, but not
22 limited to, any one or more of the following:

23 (1) Rehire, reinstatement to a position and rescission
24 of an adverse employment action.

25 (2) Removal of the offending party from the plaintiff's
26 work environment.

27 (3) Payment of back pay, front pay and medical expenses.

28 (4) Damages for pain and suffering.

29 (5) Damages for emotional distress.

30 (6) Punitive damages.

1 (7) Reasonable attorney fees.

2 (b) Limitation.--If an employer is liable for a violation of
3 section 4 that did not include an adverse employment action,
4 emotional distress damages and punitive damages may be awarded
5 only when the actionable conduct was extreme and outrageous.
6 The limitation does not apply to individually named employee
7 defendants.

8 Section 9. Enforcement.

9 Any person aggrieved by a violation of this act may initiate
10 a civil action or other proceeding in a court of competent
11 jurisdiction no later than one year from the date of the last
12 alleged violation of section 4.

13 Section 10. Collective bargaining or arbitration agreements.

14 This act shall not prevent, interfere, exempt or supersede
15 provisions of an employee's collective bargaining or arbitration
16 agreement which provides greater rights and protections than
17 prescribed in this act. This act shall not prevent new
18 provisions of the collective bargaining or arbitration agreement
19 that provide greater rights, remedies and protections from being
20 implemented and applicable to the employee within the collective
21 bargaining or arbitration agreement.

22 Section 11. Effect of other laws.

23 (a) Effect.--Except as provided for in subsection (b),
24 provisions of this act may not be deemed to exempt a person from
25 a liability, duty or penalty provided by any other provision of
26 law. The remedies provided under section 8 shall be in addition
27 to remedies provided under any other provision of law.

28 (b) Exception.--Payments of workers' compensation shall be
29 reimbursed from damages paid under this act if an employee
30 receives compensation:

1 (1) for medical costs for the same injury or illness
2 under this act and the act of June 2, 1915 (P.L.736, No.338),
3 known as the Workers' Compensation Act; or

4 (2) in cash payments under this act and the Workers'
5 Compensation Act for the same period of time not working as a
6 result of the compensable injury or illness or unlawful
7 employment practice.

8 Section 12. Effective date.

9 This act shall take effect in 60 days.