

---

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1179 Session of  
2013

---

INTRODUCED BY COHEN, BISHOP, V. BROWN, CALTAGIRONE, P. DALEY,  
HARKINS, KORTZ, MAHONEY, MOLCHANY, O'BRIEN AND THOMAS,  
APRIL 15, 2013

---

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 15, 2013

---

AN ACT

1 Providing for healthy workplaces; and allowing for court-ordered  
2 relief.

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

1 employees.

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

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

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

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

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

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

27 Section 3. Definitions.

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

1 "Abusive conduct." Acts or omissions that a reasonable  
2 individual would find abusive, based on the severity, nature and  
3 frequency of the conduct, including, but not limited to:

4 (1) repeated verbal abuse by the use of derogatory  
5 remarks, insults and epithets;

6 (2) verbal, nonverbal or physical conduct of a  
7 threatening, intimidating or humiliating nature; or

8 (3) the sabotage or undermining of an employee's work  
9 performance. It shall be considered an aggravating factor if  
10 the conduct exploited an employee's known psychological or  
11 physical illness or disability. A single act normally shall  
12 not constitute abusive conduct, but an especially severe and  
13 egregious act may meet this standard.

14 "Abusive work environment." An employment condition when an  
15 employer or one or more of its employees, acting with intent to  
16 cause pain or distress to an employee, subjects an employee to  
17 abusive conduct that causes physical or psychological harm.

18 "Adverse employment action." An outcome that negatively  
19 impacts an employee, including, but not limited to:

20 (1) a termination, demotion, unfavorable reassignment or  
21 failure to promote;

22 (2) disciplinary action; or

23 (3) reduction in compensation.

24 "Constructive discharge." An adverse employment action by  
25 which:

26 (1) the employee reasonably believed he or she was  
27 subjected to an abusive work environment;

28 (2) the employee resigned because of the conduct; and

29 (3) the employer was aware of the abusive conduct before  
30 the resignation and failed to stop it.

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

4 "Psychological harm." 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 An employee may not be subjected to an abusive work  
9 environment. An employer or employee may not retaliate in any  
10 manner against an employee who has opposed an unlawful  
11 employment practice under this act or who has made a charge,  
12 testified, assisted or participated in any manner in an  
13 investigation or proceeding under this act, including, but not  
14 limited to, by:

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

18 Section 5. Employer liability.

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

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

28 Section 6. Employee liability.

29 An employee may be individually liable for a violation of  
30 section 4. It shall be an affirmative defense for an employee

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

4 Section 7. Affirmative defenses.

5 An affirmative defense shall be any of the following:

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

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

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

14 Section 8. Remedies.

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

20 (1) Reinstatement.

21 (2) Removal of the offending party from the plaintiff's  
22 work environment.

23 (3) Reimbursement for lost wages, front pay and medical  
24 expenses.

25 (4) Compensation for pain and suffering.

26 (5) Compensation for emotional distress.

27 (6) Punitive damages.

28 (7) Attorney fees.

29 (b) Limitation.--If an employer is liable for a violation of  
30 section 4 that did not include an adverse employment action,

1 emotional distress damages and punitive damages may be awarded  
2 only when the actionable conduct was extreme and outrageous.  
3 The limitation does not apply to individually named employee  
4 defendants.

5 Section 9. Enforcement.

6 The provisions of this act are enforceable solely by means of  
7 a civil cause of action commenced by an injured employee to be  
8 commenced no later than one year from the date of the last  
9 alleged violation of section 4.

10 Section 10. Collective bargaining agreements.

11 This act may not prevent, interfere, exempt or supersede  
12 current provisions of an employee's existing collective  
13 bargaining agreement that provides greater rights and  
14 protections than prescribed in this act. This act may not  
15 prevent new provisions of the collective bargaining agreement  
16 that provide greater rights and protections from being  
17 implemented and applicable to the employee within the collective  
18 bargaining agreement. If the collective bargaining agreement  
19 provides greater rights and protections than outlined in this  
20 act, the recognized collective bargaining agent may opt to  
21 accept or reject to be covered by the provisions of this act.

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 pursuant to both this act and the act of June 2, 1915  
3 (P.L.736, No.338), known as the Workers' Compensation Act; or

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

8 Section 12. Effective date.

9 This act shall take effect immediately.