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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1693 Session of  
2019

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INTRODUCED BY HARKINS, DONATUCCI, SCHLOSSBERG, CALTAGIRONE,  
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NEILSON AND PASHINSKI, JUNE 27, 2019

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JUNE 27, 2019

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AN ACT

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

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

12 "Abusive conduct." As follows:

13 (1) An act or omission intended to inflict and resulting  
14 in physical or psychological injury, which is not injury  
15 compensable under the act of June 2, 1915 (P.L.736, No.338),  
16 known as the Workers' Compensation Act, if the injury  
17 necessitates treatment by a qualified, licensed medical,

1 mental health or rehabilitative professional and is inflicted  
2 by means of acts or omissions that a reasonable individual  
3 would find abusive, based on the severity, nature and  
4 frequency of the conduct, including, but not limited to:

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

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

9 (iii) The sabotage or undermining of an employee's  
10 work performance.

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

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

17 "Abusive work environment." An employment condition when an  
18 employer or one or more of an employer's employees, acting with  
19 intent to cause pain or distress to an employee, subjects an  
20 employee to abusive conduct.

21 "Adverse employment action." A materially and objectively  
22 adverse reduction in terms, conditions or privileges of  
23 employment, including, but not limited to:

24 (1) a termination, demotion, unfavorable reassignment or  
25 failure to promote;

26 (2) disciplinary action; or

27 (3) reduction in compensation.

28 "Constructive discharge." An adverse employment action  
29 where:

30 (1) the employee reasonably believes that the employee

1 was subjected to an abusive work environment;

2 (2) the employee resigns because of the abusive conduct;  
3 and

4 (3) the employer was aware of the abusive conduct before  
5 the employee's resignation and failed to respond to and  
6 prevent the abusive conduct from recurring.

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

10 (1) an individual employed in agriculture or in the  
11 domestic service of a person;

12 (2) an individual who, as a part of the individual's  
13 employment, resides in the personal residence of the  
14 employer; or

15 (3) an individual employed by the individual's parents,  
16 spouse or child.

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

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

29 "Psychological injury." The impairment of an individual's  
30 mental health, as established by competent evidence to the

1 satisfaction of the court.

2 Section 3. Abusive work environment.

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

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

- 11 (1) internal complaints and proceedings;
- 12 (2) arbitration and mediation proceedings; or
- 13 (3) legal actions.

14 Section 4. Employer liability.

15 An employer shall be liable for a violation of section 3  
16 committed by an employer's employee. If the alleged violation of  
17 section 3 does not include an adverse employment action, it  
18 shall be an affirmative defense for an employer only that:

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

24 Section 5. Employee liability.

25 An employee may be individually liable for a violation of  
26 section 3. It shall be an affirmative defense for an employee  
27 only that the employee committed a violation of section 3 at the  
28 direction of the employer, under actual or implied threat of an  
29 adverse employment action.

30 Section 6. Affirmative defenses.

1 Any of the following is an affirmative defense to an action  
2 under section 3:

3 (1) The complaint is based on an adverse employment  
4 action reasonably made for poor performance, misconduct or  
5 economic necessity.

6 (2) The complaint is based on a reasonable performance  
7 evaluation.

8 (3) The complaint is based on an employer's reasonable  
9 investigation about potentially illegal or unethical  
10 activity.

11 (4) The complaint is based on an action taken by the  
12 employer that it was required by law to take.

13 Section 7. Remedies.

14 (a) Relief.--If a defendant has been found liable for a  
15 violation of section 3, the court may enjoin the defendant from  
16 engaging in the unlawful employment practice and may order any  
17 other relief that is deemed appropriate, including, but not  
18 limited to, any one or more of the following:

19 (1) Rehiring of the plaintiff, reinstatement to a  
20 position and rescission of an adverse employment action.

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

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

24 (4) Damages for pain and suffering.

25 (5) Damages for emotional distress.

26 (6) Punitive damages.

27 (7) Reasonable attorney fees.

28 (b) Limitation.--If an employer is liable for a violation of  
29 section 3 that did not include an adverse employment action,  
30 emotional distress damages and punitive damages may be awarded

1 only when the actionable conduct was extreme and outrageous.  
2 The limitation does not apply to individually named employee  
3 defendants.

4 Section 8. Enforcement.

5 A person aggrieved by a violation of this act may initiate a  
6 civil action or other proceeding in a court of competent  
7 jurisdiction not later than one year from the date of the last  
8 alleged violation of section 3.

9 Section 9. Collective bargaining or arbitration agreements.

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

18 Section 10. Effect of other laws.

19 (a) Effect.--Except as provided in subsection (b),  
20 provisions of this act may not be deemed to exempt a person from  
21 a liability, duty or penalty provided by any other provision of  
22 law. The remedies provided under section 7 shall be in addition  
23 to remedies provided under any other provision of law.

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

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

30 (2) in cash payments under this act and the Workers'

1 Compensation Act for the same period of time not working as a  
2 result of the compensable injury or illness or unlawful  
3 employment practice.

4 Section 11. Effective date.

5 This act shall take effect in 60 days.