

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

S.52

Introduced by Senators Cummings, Doyle and Pollina

Referred to Committee on Economic Development, Housing and General

Affairs

Date: February 4, 2011

Subject: Labor; unlawful employment practices; bullying; prohibition

Statement of purpose: This bill proposes to protect employees from bullying or being a victim of abusive treatment in the workplace.

*An act relating to workplace bullying*

~~An act to protect employees from abuse at work~~

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. FINDINGS AND PURPOSE~~

~~(a) The general assembly finds the following:~~

~~(1) The social and economic well-being of Vermont is enhanced by healthy and productive workers.~~

~~(2) Workplace bullying and harassment can cause serious harm to a targeted employee by causing the employee feelings of shame and humiliation, severe anxiety, depression, suicidal tendencies, impaired immune system, hypertension, increased risk of cardiovascular disease, and symptoms of post-traumatic stress disorder.~~

1 ~~(3) An abusive work environment can have serious consequences for~~  
2 ~~employers, including reduced employee productivity and morale, high turnover~~  
3 ~~and absenteeism rates, and increase in medical and workers' compensation~~  
4 ~~costs.~~

5 (4) Existing discrimination laws, workers' compensation insurance, and  
6 common-law tort actions are inadequate to discourage abusive behavior or to  
7 provide adequate relief to all employees who are harmed by an abusive work  
8 environment.

9 (b) The purpose of this act is to provide the following:

10 (1) Legal relief for employees who have suffered physically,  
11 psychologically, or economically by having been deliberately subjected to  
12 abusive, bullying behavior in the workplace.

13 (2) Incentives for employers to increase their awareness of the quality of  
14 the work environment and to prevent and respond to mistreatment of  
15 employees in the workplace.

16 Sec. 2. 21 V.S.A. § 495i is added to read:

17 § 495i. ABUSIVE EMPLOYMENT ENVIRONMENT

18 (a) For the purposes of this section:

19 (1) "Abusive conduct" means conduct that a reasonable person would  
20 experience as hostile, based on its severity, nature, and frequency. Abusive  
21 conduct may include repeated infliction of verbal abuse, such as derogatory

1 ~~remarks, insults, and epithets, verbal or physical conduct that is threatening,~~  
2 intimidating, or humiliating, efforts to sabotage or undermine an employee's  
3 work performance, or attempts to exploit an employee's known psychological  
4 or physical vulnerability.

5 (2) "Abusive employment environment" means circumstances in a  
6 workplace in which abusive conduct toward an employee occurs and is  
7 sufficient to cause tangible harm to the targeted employee.

8 (3) "Adverse employment action" includes an action to terminate from  
9 employment, demote, make an unfavorable reassignment, limit promotion,  
10 discipline, or reduce compensation and includes a constructive discharge.

11 (4) "Constructive discharge" means a termination of employment  
12 because an employee reasonably believed that he or she was subjected to  
13 abusive conduct, resigned because of that conduct and prior to resigning  
14 notified the employer of the abusive conduct, and the employer failed to take  
15 action to correct the situation.

16 (5) "Malice" means an intention or desire to cause pain, injury, or  
17 distress to another.

18 (6) "Tangible harm" means psychological or physical damage.  
19 Psychological damage is the material impairment of an individual's mental  
20 health, and physical damage is material impairment of an individual's physical  
21 health or bodily integrity.

1 ~~(b) It is an unlawful employment practice to subject an employee to an~~  
2 ~~abusive work environment and to retaliate in any manner against an employee~~  
3 ~~who has made a charge, testified, or assisted or participated in any manner in~~  
4 ~~an investigation or proceeding under this section.~~

5 (c) An employer shall be vicariously liable for any unlawful employment  
6 practice under this section committed by any of its employees.

7 (1) If the alleged unlawful employment practice does not include an  
8 adverse employment action, the employer may plead either or both of the  
9 following as an affirmative defense:

10 (A) The employer exercised reasonable care to prevent and promptly  
11 correct any abusive contact.

12 (B) The aggrieved employee unreasonably failed to take appropriate  
13 preventive or corrective opportunities provided by the employer.

14 (2) An employer may claim as an affirmative defense that the adverse  
15 employment action was taken for one or more of the following reasons:

16 (A) Poor performance, misconduct, or economic necessity.

17 (B) In response to a reasonable performance evaluation.

18 (C) In order to conduct a reasonable investigation about potentially  
19 illegal or unethical activity.

20 (d) An employee who may be individually liable for a violation of  
21 subsection (b) of this section may plead the affirmative defense that the

1 ~~employee violated subsection (b) at the direction of the employer under the~~  
2 ~~threat of an adverse employment action.~~

*Sec. 1. FINDINGS*

*The general assembly finds that:*

*(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.*

*(2) Some studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.*

*(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual. Such nondiscriminatory abuse is often referred to as "workplace bullying."*

*(4) The Vermont office of attorney general's civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee's membership in a category protected by antidiscrimination laws.*

*(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.*

*(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.*

*(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2011 adjourned session of the general assembly.*

*Sec. 2. STUDY*

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine:

(1) A definition of “workplace bullying” or “abusive conduct” in the workplace not addressed by existing law.

(2) Whether there is a need for additional laws regarding workplace bullying.

(3) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

(3) The commissioner of the department of labor or designee.

(4) The commissioner of the department of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2011. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2012. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.