

2018 -- S 2471

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- HEALTHY WORKPLACE

Introduced By: Senators Ciccone, Calkin, Goldin, Euer, and Nesselbush

Date Introduced: February 15, 2018

Referred To: Senate 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 52.1

4 THE HEALTHY WORKPLACE ACT OF 2018

5 **28-52.1-1. Short title.**

6 This act shall be known and may be cited as "The Healthy Workplace Act of 2018".

7 **28-52.1-2. Legislative findings and purpose.**

8 The legislature finds that:

9 (1) The social and economic well-being of the state is dependent upon healthy and
10 productive employees;

11 (2) Nearly a one-third (1/3) of all employees will directly experience health-endangering
12 workplace bullying, abuse, sexual harassment and/or non-sexual harassment during their working
13 lives;

14 (3) Workplace bullying, abuse, sexual harassment and/or non-sexual harassment can
15 inflict serious harm upon targeted employees, including feelings of shame and humiliation, severe
16 anxiety, depression, suicidal tendencies, impaired immune systems, hypertension, increased risk
17 of cardiovascular disease, and symptoms consistent with post-traumatic stress disorder;

18 (4) Abusive work environments can have serious consequences for employers, including
19 reduced employee productivity and morale, higher turnover and absenteeism rates, and increases

1 in medical and workers' compensation claims;

2 (5) If mistreated employees who have been subjected to abusive treatment at work cannot
3 establish the behavior was motivated by race, color, sex, sexual orientation, national origin, or
4 age, they are unlikely to be protected by the law against such mistreatment;

5 (6) Legal protection from abusive work environments should not be limited to behavior
6 grounded in protected class status as that provided for under employment discrimination statutes;

7 (7) Existing workers' compensation plans and common law tort actions are inadequate to
8 discourage this behavior or to provide adequate relief to employees who have been harmed by
9 abusive work environments; and

10 (8) It is the purpose of this chapter:

11 (i) To provide legal relief for employees who have been harmed, psychologically,
12 physically, or economically, by deliberate exposure to abusive work environments; and

13 (ii) To provide legal incentive for employers to prevent and respond to abusive
14 mistreatment of employees at work.

15 **28-52.1-3. Definitions.**

16 (a) For the purposes of this chapter:

17 (1) "Abusive conduct" means and includes acts, omissions, or both, that a reasonable
18 person would find abusive based on the severity, nature, and frequency of the conduct. Abusive
19 conduct may include, but is not limited to:

20 (i) Repeated verbal abuse such as the use of derogatory remarks, insults, epithets;

21 (ii) Verbal, or nonverbal, or physical conduct of a threatening, intimidating, or
22 humiliating nature; or

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

24 (iv) Sexual harassment as defined in § 28-51-1(b).

25 (v) It shall be considered an aggravating factor that the conduct exploited an employee's
26 known psychological or physical illness or disability. A single act normally will not constitute
27 abusive conduct, but an especially severe and egregious act may meet this standard.

28 (2) "Abusive work environment" means and exists when an employer or one or more of
29 its employees, acting with intent to cause pain and distress to an employee, subjects that
30 employee to abusive conduct that causes physical and/or, psychological harm.

31 (3) "Adverse employment action" means and includes, but is not limited to, a termination,
32 demotion, unfavorable reassignment, failure to promote, disciplinary action, or reduction in
33 compensation.

34 (4) "Constructive discharge" means and shall be considered a termination, and therefore,

1 and adverse employment action within the meaning of this chapter. A constructive discharge for
2 purposes of this chapter exists where:

3 (i) The employee reasonably believed they were subjected to an abusive work
4 environment;

5 (ii) The employee resigned because of that conduct; and

6 (iii) The employer was aware of the abusive conduct prior to the resignation and failed to
7 stop it.

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

10 (6) "Psychological harm" means the impairment of a person's mental health, as
11 established by competent evidence.

12 **28-52.1-4. Unlawful employment practices.**

13 (a) It shall be an unlawful employment practice under this chapter to subject an employee
14 to an abusive work environment as defined in § 28-52.1-2.

15 (b) It shall be an unlawful employment practice under this chapter to retaliate in any
16 manner against an employee who has opposed any unlawful employment practice under this
17 chapter, who has made a charge, testified, assisted, or who has participated in any manner in an
18 investigation or proceeding under this chapter, including, but not limited to, internal complaints
19 and proceedings, arbitration and mediation proceedings, and legal actions.

20 **28-52.1-5. Employer liability and defense.**

21 (a) An employer shall be vicariously liable for any unlawful employment practice
22 committed by their employee.

23 (b) Where the alleged unlawful employment practice does not include an adverse
24 employment action, it shall be an affirmative defense for an employer that:

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

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

29 **28-52.1-6. Employee liability and defense.**

30 (a) An employee may be individually liable for an unlawful employment practice as
31 defined by this chapter.

32 (b) It shall be an affirmative defense for an employee only that the employee committed
33 an unlawful employment practice as defined by this chapter at the direction of the employer,
34 under actual or implied threat of an adverse employment action.

1 **28-52.1-7. Affirmative defenses.**

2 It shall be an affirmative defense that:

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

5 (2) The complaint is based on reasonable performance evaluation; or

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

8 **28-52.1-8. Relief and limitations on employer liability.**

9 (a) Relief generally. Where a party is liable for an unlawful employment practice under
10 this chapter, the court may enjoin the defendant from engaging in the unlawful employment
11 practice, and may order any other relief that is deemed appropriate, including, but not limited to,
12 reinstatement, removal of the offending party from the complainant's work environment, back
13 pay, front pay, medical expenses, compensation for pain and suffering, compensation for
14 emotional distress, punitive damages, and attorneys' fees.

15 (b) Limitations on employer liability. Where an employee is liable for an unlawful
16 employment practice under this chapter that did not include an adverse employment action,
17 emotional distress damages and punitive damages may be awarded only when the actionable
18 conduct was extreme and outrageous. This limitation does not apply to individually named
19 employee defendants.

20 **28-52.1-9. Private right of action.**

21 (a) This chapter shall be enforced solely by a private right of action.

22 (b) An action under this chapter must be commenced not later than one year after the last
23 act that constitutes the alleged unlawful employment practice.

24 **28-52.1-10. Effect on other legal relationships.**

25 (a) This chapter does not supersede any rights and obligations provided under collective
26 bargaining laws and regulations.

27 (b) The remedies provided in this chapter shall be in addition to any remedies provided
28 under any other law, and nothing in this chapter shall relieve any person from any liability, duty,
29 penalty or punishment provided by any other law, except that if an employee receives workers'
30 compensation for medical costs for the same injury or illness pursuant to both this chapter and the
31 workers' compensation law, or compensation under both this chapter and that law in cash
32 payments for the same period of time not working as a result of the compensable injury or illness
33 or the unlawful employment practice, the payment of workers' compensation shall be reimbursed
34 from the compensation paid under this chapter.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- HEALTHY WORKPLACE

1 This act would create the "Healthy Workplace Act of 2018" and would establish a cause
2 of action against employers and employees for workplace bullying, harassment and other abusive
3 conduct that is tolerated by employers and which may not fall into other categories already
4 protected such as race, color and sex or sexual orientation.

5 This act would take effect upon passage.

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