

SENATE, No. 280

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Establishes the “Healthy Workplace Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning abusive conduct in the workplace and
2 supplementing Title 34 of the Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. This act shall be known and may be cited as the “Healthy
8 Workplace Act.”

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10 2. The Legislature finds and declares that:

11 a. The social and economic well-being of the State is
12 dependant upon healthy and productive employees.

13 b. Surveys and studies have shown that between 16 to 21
14 percent of employees nationwide have directly experienced health-
15 endangering workplace bullying, abuse, and harassment. Those
16 studies further show that this behavior is four times more prevalent
17 than sexual harassment alone.

18 c. Studies have documented that abusive work environments
19 can have serious effects on affected employees, including feelings
20 of shame and humiliation, stress, loss of sleep, severe anxiety,
21 depression, post-traumatic stress disorder, reduced immunity to
22 infection, gastrointestinal disorders and hypertension. Moreover,
23 abusive work environments can have serious consequences for
24 employers, including reduced employee productivity and morale,
25 higher turnover and absenteeism rates and significant increases in
26 medical and workers’ compensation claims.

27 d. Current employment discrimination law provides protection
28 only for those employees who have been subjected to abusive
29 treatment at work on the basis of race, color, sex, national origin, or
30 age. Furthermore, existing workers’ compensation laws are
31 inadequate to discourage this kind of behavior or provide adequate
32 redress to employees who have been harmed by abusive work
33 environments.

34 e. It is therefore appropriate to establish and provide adequate
35 procedures and remedies for employees aggrieved in this way.

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37 3. For the purposes of this act:

38 “Abusive conduct” means conduct of an employer or employee
39 in the workplace that a reasonable person would find hostile.
40 Abusive conduct includes, but is not limited to: verbal or physical
41 conduct that a reasonable person would find threatening,
42 intimidating, or humiliating; the gratuitous sabotage or undermining
43 of an employee’s work performance; attempts to exploit an
44 employee’s known psychological or physical vulnerability; or
45 repeated infliction of verbal abuse, such as the use of derogatory
46 remarks, insults, and epithets. The determination of whether
47 abusive conduct is present shall include the severity, nature and
48 frequency of the conduct, and, where applicable, the continuation of

1 the conduct after the employee requests that it cease or
2 demonstrates outward signs of emotional or physical distress in the
3 face of the conduct. A single act shall not constitute abusive
4 conduct unless it is especially severe. Conduct shall not be
5 regarded as abusive conduct if an employer provides clear and
6 convincing proof that the conduct is necessary for the furtherance of
7 the employer's legitimate and lawful business interest.

8 "Abusive work environment" means a workplace in which an
9 employee is subjected to abusive conduct by the employer,
10 employees of the employer, or contractors of the employer which is
11 severe enough to cause physical or psychological harm to the
12 employee.

13 "Adverse employment action" means a termination of
14 employment, a constructive discharge, a demotion, an unfavorable
15 reassignment, a refusal to promote, or a disciplinary action resulting
16 in monetary loss.

17 "Constructive discharge" means abusive conduct which causes
18 an employee to resign after the employee has brought to the
19 employer's attention the abusive conduct and the employer failed to
20 take reasonable measures to eliminate the abusive conduct.

21 "Employee" means any person engaged in service to an
22 employer for wages, salary or other compensation.

23 "Employer" means a corporation, partnership, individual
24 proprietor, joint venture, firm, company or other similar entity, or
25 any individual owner, corporate officer or shareholder of the entity
26 who has engaged directly or has aided or abetted the committing of
27 a violation of this act, or the State and any political subdivision or
28 other instrumentality of the State.

29 "Physical harm" means a material impairment of an employee's
30 physical health or bodily integrity, as documented by a physician or
31 supported by competent expert evidence.

32 "Psychological harm" means a material impairment of an
33 employee's mental health, as documented by a psychologist,
34 psychiatrist or psychotherapist or supported by competent expert
35 evidence.

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37 4. It shall be an unlawful employment practice:

38 a. For an employer to permit an employee to be subjected to an
39 abusive work environment; or

40 b. For an employer or any agent or employee of the employer
41 to subject an employee to an abusive work environment; or

42 c. For an employer to retaliate or take reprisal in any manner
43 against an employee because the employee has brought an action
44 under this act, or because the employee has made a charge, testified,
45 assisted or participated in any manner in an investigation or
46 proceeding under this act.

1 5. a. Upon a violation of any provision of this act, an
2 aggrieved employee or former employee may, within one year,
3 institute an action in a court of competent jurisdiction. If the court
4 determines that a defendant committed an unlawful employment
5 practice in violation of the provisions of this act, the court shall
6 order, as applicable: an injunction to restrain any violation of this
7 act which is continuing at the time that the court issues its order; the
8 reinstatement of the employee with full wages, fringe benefits and
9 seniority rights; removal of any offending party from the work
10 environment of the employee; compensation for all lost wages,
11 benefits and other remuneration; compensation for medical costs;
12 compensation for emotional duress; punitive damages; and the
13 payment by the employer of reasonable costs and attorney's fees.

14 b. If the court determines that the employer committed an
15 unlawful employment practice in violation of the provisions of this
16 act, but that the violation did not include an adverse employment
17 action against the employee or result in any lost work time, earnings
18 or other benefits of employment by the employee, the employer
19 shall not be liable for punitive damages.

20 c. If the alleged violation is based solely on abusive conduct by
21 coworkers of the aggrieved employee and none of the abusive
22 conduct is by a supervisor or manager, it shall be an affirmative
23 defense that the employer promulgated an effective policy to
24 prohibit and deter the abusive conduct and the employee failed to
25 take advantage of appropriate preventative or corrective
26 opportunities provided by the employer, except that this defense
27 shall not apply if the violation includes an adverse employment
28 action against the employee.

29 d. The remedies provided for in this section shall be in addition
30 to any remedies provided under any other State or federal law or
31 regulation, and nothing in this act shall relieve any person from any
32 liability, duty, penalty or punishment provided by any other State or
33 federal law or regulation, including the "Law Against
34 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) and the workers'
35 compensation law, R.S.34:15-1 et seq., except that if an employee
36 receives compensation for medical costs for the same injury or
37 illness pursuant to both this act and the workers' compensation law,
38 R.S.34:15-1 et seq., or compensation under both this act and that
39 law in cash payments for the same period of time not working as a
40 result of the compensable injury or illness or the unlawful
41 employment practice, the payments of workers' compensation shall
42 be reimbursed from compensation paid under this act. Nothing in
43 this act shall be deemed to diminish the rights, privileges, or
44 remedies of any employee or employer under the provisions of any
45 collective bargaining agreement, including under any grievance
46 procedure or other dispute resolution procedure established
47 pursuant to a collective bargaining agreement.

1 6. This act shall take effect immediately.

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STATEMENT

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6 This bill, the “Healthy Workplace Act,” makes it an unlawful
7 employment practice for an employer to permit an employee to be
8 subjected to an abusive work environment, for an employer or any
9 agent or employee of the employer to subject an employee to an
10 abusive work environment, or for an employer to retaliate against
11 an employee because the employee brings or participates in an
12 action, investigation or proceeding related to the abusive work
13 environment.

14 The bill defines an “abusive work environment” as a workplace
15 in which an employee is subjected to abusive conduct severe
16 enough to cause physical or psychological harm. “Abusive
17 conduct” is defined as workplace conduct of an employer or
18 employee that a reasonable person would find hostile, including
19 threatening, intimidating, or humiliating verbal or physical conduct,
20 gratuitous sabotage or undermining of an employee’s work
21 performance, attempts to exploit an employee’s known
22 psychological or physical vulnerability, or repeated infliction of
23 verbal abuse, such as the use of derogatory remarks, insults, and
24 epithets.

25 The bill requires a court which determines that a defendant has
26 violated the provisions of this bill to order, as applicable, an
27 injunction to restrain any continuing violation, reinstatement of the
28 employee, removal of any offending party from the employee’s
29 work environment, compensation for lost wages, benefits and other
30 remuneration; compensation for medical costs and emotional
31 duress; punitive damages; and reasonable costs and attorney's fees.

32 Punitive damages are not allowed if the violation does not
33 include an adverse employment action against the employee or
34 result in lost work time, earnings or other benefits.