

Senate Bill 727

Sponsored by Senator BURDICK (at the request of Pam Beaty)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes unlawful employment practice of subjecting employee to abusive work environment. Limits recovery of damages to private right of action.

A BILL FOR AN ACT

1 Relating to abusive work environments.

2 Whereas the social and economic well-being of the state is dependent upon healthy and pro-
3 ductive employees; and

4 Whereas between 37 and 59 percent of employees directly experience health-endangering
5 workplace bullying, abuse and harassment, and this mistreatment is approximately four times more
6 prevalent than sexual harassment alone; and

7 Whereas workplace bullying, mobbing and harassment can inflict serious harm upon targeted
8 employees, including feelings of shame and humiliation, severe anxiety, depression, suicidal tenden-
9 cies, impaired immune systems, hypertension, increased risk of cardiovascular disease and symptoms
10 consistent with post-traumatic stress disorder; and

11 Whereas abusive work environments can have serious consequences for employers, including
12 reduced employee productivity and morale, higher turnover and absenteeism rates, and increases in
13 medical and workers' compensation claims; and

14 Whereas if mistreated employees who have been subjected to abusive treatment at work cannot
15 establish that the behavior was motivated by race, color, sex, sexual orientation, national origin or
16 age, they are unlikely to be protected by the law against such mistreatment; and

17 Whereas legal protection from abusive work environments should not be limited to behavior
18 grounded in protected class status as provided for under employment discrimination statutes; and

19 Whereas existing workers' compensation plans and common law tort actions are inadequate to
20 discourage this behavior or to provide adequate relief to employees who have been harmed by abu-
21 sive work environments; now, therefore,

22 **Be It Enacted by the People of the State of Oregon:**

23 **SECTION 1. Purpose. It is the purpose of sections 1 to 8 of this 2009 Act to provide:**

24 (1) **Legal relief for employees who have suffered psychological, physical, economic or
25 other harm by being deliberately subjected to an abusive work environment; and**

26 (2) **Legal incentive for employers to prevent and respond to abusive treatment of em-
27 ployees at work.**

28 **SECTION 2. Definitions. As used in sections 1 to 8 of this 2009 Act:**

29 (1) **"Abusive conduct" includes acts and omissions that a reasonable person would find
30 hostile, based on the severity, nature and frequency of the conduct. Abusive conduct in-
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NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 cludes, but is not limited to:

2 (a) Repeated infliction of verbal abuse such as the use of derogatory remarks, insults and
3 epithets;

4 (b) Verbal or physical conduct of a threatening, intimidating or humiliating nature;

5 (c) Sabotage or undermining of an employee’s work performance; or

6 (d) Exploitation of an employee’s known psychological or physical vulnerability.

7 (2) “Abusive work environment” means a work environment under which a person, acting
8 with malice, subjects an employee to abusive conduct severe enough to cause tangible harm
9 to the employee.

10 (3) “Adverse employment action” includes, but is not limited to, a constructive discharge,
11 termination, demotion, unfavorable reassignment, failure to promote, disciplinary action or
12 reduction in compensation.

13 (4) “Constructive discharge” means the termination of employment by the resignation
14 of the employee if:

15 (a) The employee reasonably believed that the employee was subjected to abusive con-
16 duct;

17 (b) The employee resigned because of the abusive conduct; and

18 (c) Prior to resigning, the employee brought to the employer’s attention the existence
19 of the abusive conduct and the employer failed to take reasonable steps to correct the situ-
20 ation.

21 (5) “Malice” means the desire to cause pain, injury or distress to another.

22 (6) “Physical harm” means the material impairment of a person’s physical health or
23 bodily integrity, as established by competent evidence.

24 (7) “Psychological harm” means the material impairment of a person’s mental health,
25 as established by competent evidence.

26 (8) “Tangible harm” means psychological harm or physical harm.

27 **SECTION 3. Unlawful employment practices.** It is an unlawful employment practice to:

28 (1) Subject an employee to an abusive work environment. A single act normally will not
29 constitute an abusive work environment, but an especially severe and egregious act may
30 meet this standard.

31 (2) Retaliate in any manner against an employee who has:

32 (a) Opposed any unlawful employment practice under sections 1 to 8 of this 2009 Act; or

33 (b) Made an allegation, testified, assisted or participated in any manner in an investi-
34 gation or proceeding arising under sections 1 to 8 of this 2009 Act including, but not limited
35 to, internal complaints and proceedings, arbitration and mediation proceedings and legal
36 actions.

37 **SECTION 4. Employer liability and defense.** (1) An employer is liable for an unlawful
38 employment practice described in section 3 of this 2009 Act that is committed by an employee
39 of the employer.

40 (2) If the alleged unlawful employment practice did not result in an adverse employment
41 action, it is an affirmative defense for an employer that:

42 (a) The employer exercised reasonable care to prevent and promptly correct any
43 actionable conduct; or

44 (b) The employee claiming to have been subject to an unlawful employment practice un-
45 reasonably failed to take advantage of appropriate preventive or corrective opportunities

1 provided by the employer.

2 (3) If the alleged unlawful employment practice resulted in an adverse employment
3 action, it is an affirmative defense for an employer that the complaint is based on:

4 (a) An action reasonably taken for poor performance, misconduct or economic necessity;

5 (b) A reasonable performance evaluation; or

6 (c) An employer's reasonable investigation of potentially illegal or unethical activity.

7 **SECTION 5. Employee liability and defense.** (1) An employee may be held individually li-
8 able for an unlawful employment practice described in section 3 of this 2009 Act.

9 (2) It is an affirmative defense for an employee that the employee committed an unlawful
10 employment practice described in section 3 of this 2009 Act at the direction of the employer
11 under threat of an adverse employment action against the employee for refusal to do so.

12 **SECTION 6. Relief.** (1) When a person is found to have committed an unlawful employ-
13 ment practice described in section 3 of this 2009 Act, the court may enjoin the defendant
14 from engaging in the unlawful employment practice and may order any other relief that the
15 court deems appropriate, including, but not limited to, reinstatement, removal of the of-
16 fending party from the complainant's work environment, back pay, front pay, medical ex-
17 penses, compensation for emotional distress, punitive damages and attorney fees.

18 (2) When an employer is found to have committed an unlawful employment practice de-
19 scribed in section 3 of this 2009 Act that did not result in an adverse employment action, the
20 employer's liability for damages for emotional distress may not exceed \$25,000, and the em-
21 ployer is not subject to punitive damages. This provision does not apply to an individually
22 named employee defendant.

23 **SECTION 7. Procedures.** (1) An action arising under section 3, 4 or 5 of this 2009 Act
24 may be enforced only by a private right of action.

25 (2) An action brought under section 3, 4 or 5 of this 2009 Act must be commenced not
26 later than one year after the date of the last act or omission that constitutes the alleged
27 unlawful employment practice.

28 **SECTION 8. Effect on other legal relationships.** The remedies provided under sections 1
29 to 8 of this 2009 Act are in addition to any other remedy provided by law, and nothing in
30 sections 1 to 8 of this 2009 Act relieves any person from any other liability, duty, penalty or
31 punishment provided by law.

32 **SECTION 9.** The section captions used in this 2009 Act are provided only for the con-
33 venience of the reader and do not become part of the statutory law of this state or express
34 any legislative intent in the enactment of this 2009 Act.

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