

Requested by Senator MANNING JR

**PROPOSED AMENDMENTS TO  
SENATE BILL 851**

1 Delete lines 4 through 9 of the printed bill and insert:

2 **“SECTION 1. Definitions. As used in sections 1 to 8 of this 2023 Act:**

3 **“(1) ‘Adverse employment action’ includes, but is not limited to, a**  
4 **constructive discharge, termination, demotion, unfavorable reassign-**  
5 **ment, failure to promote, disciplinary action or reduction in compen-**  
6 **sation.**

7 **“(2) ‘Constructive discharge’ means the termination of employment**  
8 **by the resignation of the employee because the employee reasonably**  
9 **believed that the employee was subjected to a hostile work environ-**  
10 **ment.**

11 **“(3) ‘Employee’ and ‘employer’ have the meanings given those**  
12 **terms in ORS 659A.001.**

13 **“(4) ‘Hostile work environment’ means a work environment under**  
14 **which an employee is subjected to workplace bullying that is severe**  
15 **enough to cause psychological harm to the employee.**

16 **“(5) ‘Psychological harm’ means the material impairment of a**  
17 **person’s mental health, as established by competent evidence.**

18 **“(6) ‘Workplace bullying’ includes the following conduct that occurs**  
19 **in the workplace and that a reasonable person would find hostile,**  
20 **based on the severity, nature and frequency of the conduct:**

21 **“(a) Repeated infliction of verbal abuse such as the use of deroga-**

1 tory remarks, insults and epithets;

2 “(b) Verbal or physical conduct of a threatening, intimidating or  
3 humiliating nature;

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

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

8 **“SECTION 2. Purpose.** It is the purpose of sections 1 to 8 of this 2023  
9 Act to provide:

10 “(1) Legal relief for employees who have suffered psychological  
11 harm by being deliberately subjected to a hostile work environment;  
12 and

13 “(2) Legal incentive for employers to prevent and respond to em-  
14 ployee allegations of workplace bullying.

15 **“SECTION 3. Unlawful employment practices.** It is an unlawful  
16 employment practice for an employer to:

17 “(1) Engage in workplace bullying or subject an employee to a hos-  
18 tile work environment by allowing an agent, supervisor or employee  
19 of the employer to engage in workplace bullying. A single act normally  
20 will not constitute a hostile work environment, but an especially se-  
21 vere and egregious act may meet this standard.

22 “(2) Retaliate or take an adverse employment action against an  
23 employee who has:

24 “(a) Opposed any unlawful employment practice under sections 1  
25 to 8 of this 2023 Act; or

26 “(b) Made an allegation, testified, assisted or participated in any  
27 manner in an investigation or proceeding arising under sections 1 to  
28 8 of this 2023 Act including, but not limited to, internal complaints and  
29 proceedings, arbitration and mediation proceedings and legal actions.

30 “(3) Fail to adopt and implement the policies required under section

1 4 of this 2023 Act.

2 “(4) Fail to investigate all allegations of workplace bullying.

3 **“SECTION 4. Employer polices. (1) Every employer shall adopt**  
4 **written policies outlining the processes and practices that the em-**  
5 **ployer has in place to address and discourage workplace bullying.**

6 “(2) The policy must include:

7 “(a) A statement prohibiting workplace bullying.

8 “(b) The process by which an employee may report an allegation  
9 of workplace bullying to the employer.

10 “(c) Information regarding the employer’s process and procedures  
11 for investigating an allegation of workplace bullying.

12 “(d) Any available judicial remedies for an individual alleging an  
13 unlawful practice under section 3 of this 2023 Act.

14 “(e) The timeline under which relief may be sought, including the  
15 advance notice of claim against a public body as required under ORS  
16 30.275.

17 “(3) An employer shall:

18 “(a) Provide a copy of the policies to each employee at the time of  
19 hire; and

20 “(b) Post the policies at the workplace, wherever the employer’s  
21 workplace polices and procedures are made readily available to em-  
22 ployees.

23 “(4) The Bureau of Labor and Industries shall establish and make  
24 available on the bureau’s website model procedures and policies that  
25 employers may use as guidance to establish the policies required under  
26 this section.

27 **“SECTION 5. Employer liability and defense. (1) An employer is li-**  
28 **able for an unlawful employment practice described in section 3 of this**  
29 **2023 Act that is committed by the employer or by an agent, supervisor**  
30 **or employee of the employer.**

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

4       **“(a) The employer exercised reasonable care to prevent and**  
5 **promptly correct any actionable conduct; or**

6       **“(b) The employee claiming to have been subject to an unlawful**  
7 **employment practice unreasonably failed to take advantage of appro-**  
8 **priate preventive or corrective opportunities provided by the employer.**

9       **“(3) If the alleged unlawful employment practice resulted in an ad-**  
10 **verse employment action, it is an affirmative defense for an employer**  
11 **that the complaint is based on:**

12       **“(a) An action reasonably taken for poor performance, misconduct**  
13 **or economic necessity;**

14       **“(b) A reasonable performance evaluation; or**

15       **“(c) An employer’s reasonable investigation of potentially illegal or**  
16 **unethical activity.**

17       **“SECTION 6. Procedures. (1) An action arising under section 3 of**  
18 **this 2023 Act may be enforced only by a private right of action.**

19       **“(2) An action brought under section 3 of this 2023 Act must be**  
20 **commenced not later than one year after the date of the last act or**  
21 **omission that constitutes the alleged unlawful employment practice.**

22       **“(3) When an employer is found to have committed an unlawful**  
23 **employment practice described in section 3 of this 2023 Act, the court**  
24 **may enjoin the defendant from engaging in the unlawful employment**  
25 **practice and may order any other relief that the court deems appro-**  
26 **priate, including, but not limited to, reinstatement, removal of the**  
27 **offending party from the complainant’s work environment, back pay,**  
28 **front pay, medical expenses, compensation for emotional distress, pu-**  
29 **nitive damages and attorney fees.**

30       **“SECTION 7. Effect on other legal relationships. The remedies**

1 provided under sections 1 to 8 of this 2023 Act are in addition to any  
2 other remedy provided by law, and nothing in sections 1 to 8 of this  
3 2023 Act relieves any person from any other liability, duty, penalty or  
4 punishment provided by law.

5 “SECTION 8. Employers subject to collective bargaining agree-  
6 ments. Sections 1 to 8 of this 2023 Act do not apply to an employer that  
7 is subject to a collective bargaining agreement, the terms of which  
8 include protections for employees against workplace bullying that are  
9 equivalent to or greater than the protections provided under sections  
10 1 to 8 of this 2023 Act.

11 “SECTION 9. The section captions used in this 2023 Act are provided  
12 only for the convenience of the reader and do not become part of the  
13 statutory law of this state or express any legislative intent in the  
14 enactment of this 2023 Act.”.

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