

Washington State Legislature Targets Bullying in the Workplace

By Michael A. Griffin

February 15, 2011

Responding to findings that approximately one in five employees “directly experience health-endangering workplace bullying, abuse, and harassment” and that “abusive work environments can have serious effects on targeted employees and serious consequences for employers,” a new bill has been introduced in both houses of Washington’s state legislature that will provide a legal remedy for employees and legal incentives for employers to address workplace bullying.

[House Bill 1928](#) and [Senate Bill 5789](#) would add a new section to the Washington Law Against Discrimination (RCW 49.60) that makes it an “unfair practice” to subject an employee to “an abusive work environment.” The term “abusive work environment” is defined as “a workplace where an employee is subjected to abusive conduct that is so severe that it causes physical or psychological harm to the employee.”

The state’s Human Rights Commission investigates complaints of unfair practices filed by aggrieved employees and may bring action against employers in appropriate cases.

The proposed law offers employers affirmative defenses to an action for abusive work environment. The employer must make one of the following showings:

- (a) The employer exercised reasonable care to prevent and promptly correct the abusive conduct and the aggrieved employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer. The employer may demonstrate reasonable care by adopting employment policies prohibiting abusive conduct and establishing effective enforcement procedures. This defense is not available when the abusive conduct culminates in a negative employment decision; or
- (b) The complaint is grounded primarily upon a negative employment decision made consistent with an employer’s legitimate business interests, such as a termination or demotion based on an employee’s poor performance, or the complaint is grounded primarily upon an employer’s reasonable investigation of potentially illegal or unethical activity.

A “negative employment decision” is a termination, constructive discharge, demotion, unfavorable reassignment, refusal to promote, or disciplinary action.

The proposed measure would take the Washington Law Against Discrimination in a new direction. Currently, the state’s fair employment practice law prohibits discrimination based on more familiar grounds: a person’s membership in a protected class based on disability, race, creed, national origin, sex, marital status, age (40+), and sexual orientation (including gender identity).

While the legislature appears to have attempted to keep claims manageable under this provision, the bill, if passed, is likely to expand significantly the number of claims made under the WLAD. Employers would need to ensure that their policies address general, abusive conduct in order to take advantage of the affirmative defense outlined in the bill. In any event, employers should review their anti-harassment and anti-retaliation policies to ensure they are comprehensive, and offer opportunities for reporting alleged misconduct and redress.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

Meet the Author



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