

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1685

By: Scott

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5
6 AS INTRODUCED

7 An Act relating to labor; providing for legislative
8 findings; stating purpose; defining terms; making
9 certain actions unlawful; providing for employer and
10 employee liability; providing defenses; providing
11 remedies for employer violations; providing for a
12 private right of action; providing certain time
13 limitation for commencing action; providing scope of
14 remedies; modifying workers' compensation remedies
15 under certain circumstances; providing for
16 codification; and providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 601.1 of Title 40, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The Legislature finds that:

22 1. The social and economic well-being of the state is dependent
23 upon healthy and productive employees;

24 2. Between thirty-seven percent (37%) and fifty-nine percent
(59%) of employees directly experience health-endangering workplace
bullying, abuse, and harassment, and this mistreatment is

1 approximately four times more prevalent than sexual harassment
2 alone;

3 3. Workplace bullying, mobbing, and harassment can inflict
4 serious harm upon targeted employees, including feelings of shame
5 and humiliation, severe anxiety, depression, suicidal tendencies,
6 impaired immune systems, hypertension, increased risk of
7 cardiovascular disease, and symptoms consistent with posttraumatic
8 stress disorder;

9 4. Abusive work environments can have serious consequences for
10 employers, including reduced employee productivity and morale,
11 higher turnover and absenteeism rates, and increases in medical and
12 workers' compensation claims;

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

18 6. Legal protection from abusive work environments should not
19 be limited to behavior grounded in protected class status as that
20 provided for under employment discrimination statutes; and

21 7. Existing workers' compensation plans and common-law tort
22 actions are inadequate to discourage this behavior or to provide
23 adequate relief to employees who have been harmed by abusive work
24 environments.

1 B. It is the purpose of this act:

2 1. To provide legal relief for employees who have been harmed,
3 psychologically, physically, or economically, by being deliberately
4 subjected to abusive work environments; and

5 2. To provide legal incentive for employers to prevent and
6 respond to abusive mistreatment of employees at work.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 601.2 of Title 40, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Abusive work environment. An abusive work environment
11 exists when the defendant, acting with malice, subjects an employee
12 to abusive conduct so severe that it causes tangible harm to the
13 employee.

14 1. Abusive conduct. Abusive conduct is conduct, including
15 acts, omissions, or both, that a reasonable person would find
16 hostile, based on the severity, nature, and frequency of the
17 defendant's conduct. Abusive conduct may include, but is not
18 limited to: repeated infliction of verbal abuse such as the use of
19 derogatory remarks, insults, and epithets; verbal or physical
20 conduct of a threatening, intimidating, or humiliating nature; the
21 sabotage or undermining of an employee's work performance; or
22 attempts to exploit an employee's known psychological or physical
23 vulnerability. A single act normally will not constitute abusive
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1 conduct, but an especially severe and egregious act may meet this
2 standard.

3 2. Malice. Malice means the desire to cause pain, injury, or
4 distress to another.

5 B. Tangible harm. Tangible harm means psychological harm or
6 physical harm.

7 1. Psychological harm. Psychological harm means the material
8 impairment of a person's mental health, as established by competent
9 evidence.

10 2. Physical harm. Physical harm means the material impairment
11 of a person's physical health or bodily integrity, as established by
12 competent evidence.

13 C. Adverse employment action. An adverse employment action
14 includes, but is not limited to, a termination, demotion,
15 unfavorable reassignment, failure to promote, disciplinary action,
16 or reduction in compensation.

17 D. Constructive discharge. A constructive discharge shall be
18 considered a termination, and, therefore, an adverse employment
19 action within the meaning of this act. A constructive discharge
20 exists if:

21 1. The employee reasonably believed that the employee was
22 subjected to abusive conduct;

23 2. The employee resigned because of that abusive conduct; and
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1 3. Prior to resigning, the employee brought to the employer's
2 attention the existence of the abusive conduct and the employer
3 failed to take reasonable steps to correct the situation.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 601.3 of Title 40, unless there
6 is created a duplication in numbering, reads as follows:

7 A. It shall be an unlawful employment practice under this act
8 to subject an employee to an abusive work environment as defined by
9 this act.

10 B. It shall be an unlawful employment practice under this act
11 to retaliate in any manner against an employee who has opposed any
12 unlawful employment practice under this act, or who has made a
13 charge, testified, assisted, or participated in any manner in an
14 investigation or proceeding under this act, including, but not
15 limited to, internal complaints and proceedings, arbitration and
16 mediation proceedings, and legal actions.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 601.4 of Title 40, unless there
19 is created a duplication in numbering, reads as follows:

20 A. An employer shall be vicariously liable for an unlawful
21 employment practice, as defined by this act, committed by its
22 employee.

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1 B. If the alleged unlawful employment practice does not include
2 an adverse employment action, it shall be an affirmative defense for
3 an employer only that:

4 1. The employer exercised reasonable care to prevent and
5 correct promptly any actionable behavior; and

6 2. The complainant employee unreasonably failed to take
7 advantage of appropriate preventive or corrective opportunities
8 provided by the employer.

9 SECTION 5. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 601.5 of Title 40, unless there
11 is created a duplication in numbering, reads as follows:

12 A. An employee may be individually liable for an unlawful
13 employment practice as defined by this act.

14 B. It shall be an affirmative defense for an employee only that
15 the employee committed an unlawful employment practice as defined in
16 this act at the direction of the employer, under threat of an
17 adverse employment action.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 601.6 of Title 40, unless there
20 is created a duplication in numbering, reads as follows:

21 It shall be an affirmative defense that:

22 1. The complaint is based on an adverse employment action
23 reasonably made for poor performance, misconduct, or economic
24 necessity;

1 2. The complaint is based on a reasonable performance
2 evaluation; or

3 3. The complaint is based on a defendant's reasonable
4 investigation about potentially illegal or unethical activity.

5 SECTION 7. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 601.7 of Title 40, unless there
7 is created a duplication in numbering, reads as follows:

8 A. If a defendant has been found to have committed an unlawful
9 employment practice under this act, the court may enjoin the
10 defendant from engaging in the unlawful employment practice and may
11 order any other relief that is deemed appropriate, including, but
12 not limited to, reinstatement, removal of the offending party from
13 the complainant's work environment, back pay, front pay, medical
14 expenses, compensation for emotional distress, punitive damages, and
15 attorney fees.

16 B. If an employer has been found to have committed an unlawful
17 employment practice under this act that did not culminate in an
18 adverse employment action, its liability for damages for emotional
19 distress shall not exceed Twenty-five Thousand Dollars (\$25,000.00),
20 and it shall not be subject to punitive damages. This provision
21 does not apply to individually named employee defendants.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 601.8 of Title 40, unless there
24 is created a duplication in numbering, reads as follows:

1 A. This act shall be enforced solely by a private right of
2 action.

3 B. Time limitations. An action commenced under this act shall
4 be commenced no later than one (1) year after the last act that
5 constitutes the alleged unlawful employment practice.

6 SECTION 9. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 601.9 of Title 40, unless there
8 is created a duplication in numbering, reads as follows:

9 The remedies provided for in this act shall be in addition to
10 any remedies provided under any other law, and nothing in this act
11 shall relieve any person from any liability, duty, penalty or
12 punishment provided by any other law, except that if an employee
13 receives workers' compensation for medical costs for the same injury
14 or illness pursuant to both this act and the workers' compensation
15 law, or compensation under both this act and the workers'
16 compensation law in cash payments for the same period of time as a
17 result of the compensable injury or illness or the unlawful
18 employment practice, the payments of workers' compensation shall be
19 reimbursed from compensation paid under this act.

20 SECTION 10. This act shall become effective November 1, 2009.

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