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

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

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

2. The Legislature finds and declares that:
   a. The social and economic well-being of the State is
dependant upon healthy and productive employees.
   b. Surveys and studies have shown that between 16 to 21
percent of employees nationwide have directly experienced health-
extinguishing workplace bullying, abuse, and harassment. Those
studies further show that this behavior is four times more prevalent
than sexual harassment alone.
   c. Studies have documented that abusive work environments
  can have serious effects on affected employees, including feelings
  of shame and humiliation, stress, loss of sleep, severe anxiety,
  depression, post-traumatic stress disorder, reduced immunity to
  infection, gastrointestinal disorders and hypertension. Moreover,
  abusive work environments can have serious consequences for
  employers, including reduced employee productivity and morale,
  higher turnover and absenteeism rates and significant increases in
  medical and workers’ compensation claims.
   d. Current employment discrimination law provides protection
  only for those employees who have been subjected to abusive
  treatment at work on the basis of race, color, sex, national origin, or
  age. Furthermore, existing workers’ compensation laws are
  inadequate to discourage this kind of behavior or provide adequate
  redress to employees who have been harmed by abusive work
  environments.
   e. It is therefore appropriate to establish and provide adequate
  procedures and remedies for employees aggrieved in this way.

3. For the purposes of this act:
   “Abusive conduct” means conduct of an employer or employee
in the workplace that a reasonable person would find hostile.
Abusive conduct includes, but is not limited to: verbal or physical
conduct that a reasonable person would find threatening,
intimidating, or humiliating; the gratuitous sabotage or undermining
of an employee’s work performance; attempts to exploit an
employee’s known psychological or physical vulnerability; or
repeated infliction of verbal abuse, such as the use of derogatory
remarks, insults, and epithets. The determination of whether
abusive conduct is present shall include the severity, nature and
frequency of the conduct, and, where applicable, the continuation of
the conduct after the employee requests that it cease or
demonstrates outward signs of emotional or physical distress in the
face of the conduct. A single act shall not constitute abusive
count unless it is especially severe. Conduct shall not be
regarded as abusive conduct if an employer provides clear and
convincing proof that the conduct is necessary for the furtherance of
the employer’s legitimate and lawful business interest.

“Abusive work environment” means a workplace in which an
employee is subjected to abusive conduct by the employer,
employees of the employer, or contractors of the employer which is
severe enough to cause physical or psychological harm to the
employee.

“Adverse employment action” means a termination of
employment, a constructive discharge, a demotion, an unfavorable
reassignment, a refusal to promote, or a disciplinary action resulting
in monetary loss.

“Constructive discharge” means abusive conduct which causes
an employee to resign after the employee has brought to the
employer’s attention the abusive conduct and the employer failed to
take reasonable measures to eliminate the abusive conduct.

“Employee” means any person engaged in service to an
employer for wages, salary or other compensation.

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

“Physical harm” means a material impairment of an employee’s
physical health or bodily integrity, as documented by a physician or
supported by competent expert evidence.

“Psychological harm” means a material impairment of an
employee’s mental health, as documented by a psychologist, psychiatrists or psychotherapist or supported by competent expert
evidence.

4. It shall be an unlawful employment practice:
   a. For an employer to permit an employee to be subjected to an
      abusive work environment; or
   b. For an employer or any agent or employee of the employer
to subject an employee to an abusive work environment; or
   c. For an employer to retaliate or take reprisal in any manner
      against an employee because the employee has brought an action
      under this act, or because the employee has made a charge, testified,
      assisted or participated in any manner in an investigation or
      proceeding under this act.
5. a. Upon a violation of any provision of this act, an aggrieved employee or former employee may, within one year, institute an action in a court of competent jurisdiction. If the court determines that a defendant committed an unlawful employment practice in violation of the provisions of this act, the court shall order, as applicable: an injunction to restrain any violation of this act which is continuing at the time that the court issues its order; the reinstatement of the employee with full wages, fringe benefits and seniority rights; removal of any offending party from the work environment of the employee; compensation for all lost wages, benefits and other remuneration; compensation for medical costs; compensation for emotional duress; punitive damages; and the payment by the employer of reasonable costs and attorney's fees.

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

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

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

STATEMENT

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

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

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

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