

House Bill 3316

Sponsored by Representative NELSON, Senator MANNING JR

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 for engaging in certain conduct that subjects employee to workplace bullying or hostile work environment. Allows recovery of damages by private right of action.

Requires Bureau of Labor and Industries to establish model procedures for employers to use in establishing employer policies addressing workplace bullying.

A BILL FOR AN ACT

1
2 Relating to workplace bullying.

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

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

5 (1) **"Adverse employment action" includes, but is not limited to, a constructive discharge,**
6 **termination, demotion, unfavorable reassignment, failure to promote, disciplinary action or**
7 **reduction in compensation.**

8 (2) **"Constructive discharge" means the termination of employment by the resignation**
9 **of the employee because the employee reasonably believed that the employee was subjected**
10 **to a hostile work environment.**

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

12 (4) **"Hostile work environment" means a work environment under which an employee is**
13 **subjected to workplace bullying that is severe enough to cause tangible harm to the em-**
14 **ployee.**

15 (5) **"Physical harm" means the material impairment of a person's physical health or**
16 **bodily integrity, as established by competent evidence.**

17 (6) **"Psychological harm" means the material impairment of a person's mental health,**
18 **as established by competent evidence.**

19 (7) **"Tangible harm" means psychological harm or physical harm.**

20 (8) **"Workplace bullying" includes the following conduct that occurs in the workplace and**
21 **that a reasonable person would find hostile, based on the severity, nature and frequency of**
22 **the conduct:**

23 (a) **Repeated infliction of verbal abuse such as the use of derogatory remarks, insults and**
24 **epithets;**

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

26 (c) **Sabotage or undermining of an employee's work performance; or**

27 (d) **Exploitation of an employee's known psychological or physical vulnerability.**

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

29 (1) **Legal relief for employees who have suffered psychological, physical, economic or**
30 **other harm by being deliberately subjected to a hostile work environment; and**

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 (2) Legal incentive for employers to prevent and respond to employee allegations of
2 workplace bullying.

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

5 (1) Engage in workplace bullying or subject an employee to a hostile work environment
6 by allowing an agent, supervisor or employee of the employer to engage in workplace
7 bullying. A single act normally will not constitute a hostile work environment, but an espe-
8 cially severe and egregious act may meet this standard.

9 (2) Retaliate or take an adverse employment action against an employee who has:

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

11 (b) Made an allegation, testified, assisted or participated in any manner in an investi-
12 gation or proceeding arising under sections 1 to 8 of this 2023 Act including, but not limited
13 to, internal complaints and proceedings, arbitration and mediation proceedings and legal
14 actions.

15 (3) Fail to adopt and implement the policies required under section 4 of this 2023 Act.

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

17 **SECTION 4. Employer polices.** (1) Every employer shall adopt written policies outlining
18 the processes and practices that the employer has in place to address and discourage
19 workplace bullying.

20 (2) The policy must include:

21 (a) A statement prohibiting workplace bullying.

22 (b) The process by which an employee may report an allegation of workplace bullying to
23 the employer.

24 (c) Information regarding the employer's process and procedures for investigating an
25 allegation of workplace bullying.

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

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

30 (3) An employer shall:

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

32 (b) Post the policies at the workplace, wherever the employer's workplace polices and
33 procedures are made readily available to employees.

34 (4) The Bureau of Labor and Industries shall establish and make available on the
35 bureau's website model procedures and policies that employers may use as guidance to es-
36 tablish the policies required under this section.

37 **SECTION 5. Employer liability and defense.** (1) An employer is liable for an unlawful
38 employment practice described in section 3 of this 2023 Act that is committed by the em-
39 ployer or by an agent, supervisor or employee 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 6. Procedures.** (1) An action arising under section 3 of this 2023 Act may be
8 enforced only by a private right of action.

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

12 (3) When an employer is found to have committed an unlawful employment practice de-
13 scribed in section 3 of this 2023 Act, the court may enjoin the defendant from engaging in
14 the unlawful employment practice and may order any other relief that the court deems ap-
15 propriate, including, but not limited to, reinstatement, removal of the offending party from
16 the complainant's work environment, back pay, front pay, medical expenses, compensation
17 for emotional distress, punitive damages and attorney fees.

18 **SECTION 7. Effect on other legal relationships.** The remedies provided under sections 1
19 to 8 of this 2023 Act are in addition to any other remedy provided by law, and nothing in
20 sections 1 to 8 of this 2023 Act relieves any person from any other liability, duty, penalty or
21 punishment provided by law.

22 **SECTION 8. Employers subject to collective bargaining agreements.** Sections 1 to 8 of
23 this 2023 Act do not apply to an employer that is subject to a collective bargaining agree-
24 ment, the terms of which include protections for employees against workplace bullying that
25 are equivalent to or greater than the protections provided under sections 1 to 8 of this 2023
26 Act.

27 **SECTION 9.** The section captions used in this 2023 Act are provided only for the con-
28 venience of the reader and do not become part of the statutory law of this state or express
29 any legislative intent in the enactment of this 2023 Act.

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