

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 toxic work environment.**

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

12 **“(4) ‘Mobbing’ means workplace bullying that is collectively en-**  
13 **gaged in by a group of individuals in the workplace and that is directed**  
14 **at another employee.**

15 **“(5) ‘Toxic work environment’ means a work environment under**  
16 **which an employee is subjected to workplace bullying or mobbing.**

17 **“(6) ‘Workplace bullying’ includes conduct that occurs in the**  
18 **workplace, including but not limited to mobbing, that a reasonable**  
19 **person would find toxic, based on the severity, nature and frequency**  
20 **of the conduct.**

21 **“SECTION 2. Purpose. It is the purpose of sections 1 to 8 of this 2023**

1 **Act to provide:**

2 **“(1) Legal relief for employees who have been subjected to a work**  
3 **environment that a reasonable person in the employee’s situation**  
4 **would deem to be a toxic work environment; and**

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

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

9 **“(1) Engage in workplace bullying or subject an employee to a toxic**  
10 **work environment by allowing an agent, supervisor or employee of the**  
11 **employer to engage in workplace bullying. A single act normally will**  
12 **not constitute a toxic work environment, but an especially severe and**  
13 **egregious act may meet this standard.**

14 **“(2) Retaliate or take an adverse employment action against an**  
15 **employee who has:**

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

18 **“(b) Made an allegation, testified, assisted or participated in any**  
19 **manner in an investigation or proceeding arising under sections 1 to**  
20 **8 of this 2023 Act, including but not limited to internal complaints and**  
21 **proceedings, arbitration and mediation proceedings and legal actions.**

22 **“(3) Fail to adopt and implement the policies required under section**  
23 **4 of this 2023 Act.**

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

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

28 **“(2) The policy must include:**

29 **“(a) A statement prohibiting workplace bullying.**

30 **“(b) The process by which an employee may report an allegation**

1 of workplace bullying to the employer.

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

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

6 “(e) The timeline under which relief may be sought, including the  
7 advance notice of claim against a public body as required under ORS  
8 30.275.

9 “(3) An employer shall:

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

12 “(b) Post the policies at the workplace, wherever the employer’s  
13 workplace policies and procedures are made readily available to em-  
14 ployees.

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

19 “SECTION 5. Employer liability and defense. (1) An employer is li-  
20 able for an unlawful employment practice described in section 3 of this  
21 2023 Act that is committed by the employer or by an agent, supervisor  
22 or employee of the employer.

23 “(2) If the alleged unlawful employment practice did not result in  
24 an adverse employment action, it is an affirmative defense for an  
25 employer that the employer exercised reasonable care to prevent and  
26 promptly correct any actionable conduct.

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

30 “(a) An action reasonably taken for poor performance, misconduct

1 or economic necessity; or

2 “(b) An employer’s reasonable investigation of potentially illegal or  
3 unethical activity.

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

6 “(2) An action brought under section 3 of this 2023 Act must be  
7 commenced not later than three years after the date of the last act  
8 or omission that constitutes the alleged unlawful employment prac-  
9 tice.

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

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

23 **“SECTION 8. Employers subject to collective bargaining agree-**  
24 **ments.** Sections 1 to 8 of this 2023 Act do not apply to an employer that  
25 is subject to a collective bargaining agreement, the terms of which  
26 include protections for employees against workplace bullying that are  
27 equivalent to or greater than the protections provided under sections  
28 1 to 8 of this 2023 Act.

29 **“SECTION 9.** The section captions used in this 2023 Act are provided  
30 only for the convenience of the reader and do not become part of the

1 **statutory law of this state or express any legislative intent in the**  
2 **enactment of this 2023 Act.”.**

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