

1 S.87

2 Introduced by Senator Cummings

3 Referred to Committee on

4 Date:

5 Subject: Labor; unlawful employment practices; bullying; prohibition

6 Statement of purpose: This bill proposes to protect employees from bullying  
7 or being a victim of abusive treatment in the workplace.

8 An act to protect employees from abuse at work

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. FINDINGS AND PURPOSE

11 (a) The general assembly finds the following:

12 (1) The social and economic well-being of Vermont is enhanced by  
13 healthy and productive workers.

14 (2) Workplace bullying and harassment can cause serious harm to a  
15 targeted employee by causing the employee feelings of shame and humiliation,  
16 severe anxiety, depression, suicidal tendencies, impaired immune system,  
17 hypertension, increased risk of cardiovascular disease, and symptoms of  
18 post-traumatic stress disorder.

19 (3) An abusive work environment can have serious consequences for  
20 employers, including reduced employee productivity and morale, high turnover

1 and absenteeism rates, and increase in medical and workers' compensation  
2 costs.

3 (4) Existing discrimination laws, workers' compensation insurance, and  
4 common-law tort actions are inadequate to discourage abusive behavior or to  
5 provide adequate relief to all employees who are harmed by an abusive work  
6 environment.

7 (b) The purpose of this act is to provide the following:

8 (1) Legal relief for employees who have suffered physically,  
9 psychologically, or economically by having been deliberately subjected to  
10 abusive, bullying behavior in the workplace.

11 (2) Incentives for employers to increase their awareness of the quality of  
12 the work environment and to prevent and respond to mistreatment of  
13 employees in the workplace.

14 Sec. 2. 21 V.S.A. § 495i is added to read:

15 § 495i. ABUSIVE EMPLOYMENT ENVIRONMENT

16 (a) For the purposes of this section:

17 (1) "Abusive conduct" means conduct that a reasonable person would  
18 experience as hostile, based on its severity, nature, and frequency. Abusive  
19 conduct may include repeated infliction of verbal abuse, such as derogatory  
20 remarks, insults, and epithets, verbal or physical conduct that is threatening,  
21 intimidating, or humiliating, efforts to sabotage or undermine an employee's

1 work performance, or attempting to exploit an employee's known  
2 psychological or physical vulnerability.

3 (2) "Abusive employment environment" means circumstances in a  
4 workplace in which abusive conduct toward employees occurs and is sufficient  
5 to cause tangible harm to the targeted employee.

6 (3) "Adverse employment action" includes an action to terminate from  
7 employment, demote, make an unfavorable reassignment, limit promotion,  
8 discipline, or reduce compensation and includes a constructive discharge.

9 (4) "Constructive discharge" means a termination of employment  
10 because an employee reasonably believed that he or she was subjected to  
11 abusive conduct, resigned because of that conduct and prior to resigning  
12 notified the employer of the abusive conduct, and the employer failed to take  
13 action to correct the situation.

14 (5) "Malice" means an intention or desire to cause pain, injury, or  
15 distress to another.

16 (6) "Tangible harm" means psychological or physical damage.  
17 Psychological damage is the material impairment of an individual's mental  
18 health, and physical damage is material impairment of an individual's physical  
19 health or bodily integrity.

20 (b) It is an unlawful employment practice to subject an employee to an  
21 abusive work environment and to retaliate in any manner against an employee

1 who has made a charge, testified, or assisted or participated in any manner in  
2 an investigation or proceeding under this section.

3 (c) An employer shall be vicariously liable for any unlawful employment  
4 practice under this section committed by any of its employees.

5 (1) If the alleged unlawful employment practice does not include an  
6 adverse employment action, the employer may plead either or both of the  
7 following as an affirmative defense:

8 (A) The employer exercised reasonable care to prevent and promptly  
9 correct any abusive contact.

10 (B) The aggrieved employee unreasonably failed to take appropriate  
11 preventive or corrective opportunities provided by the employer.

12 (2) An employer may claim as an affirmative defense that the adverse  
13 employment action was taken for one or more of the following reasons:

14 (A) Poor performance, misconduct, or economic necessity.

15 (B) In response to a reasonable performance evaluation.

16 (C) In order to conduct a reasonable investigation about potentially  
17 illegal or unethical activity.

18 (d) An employee who may be individually liable for a violation of  
19 subsection (b) of this section may plead the affirmative defense that the  
20 employee violated subsection (b) at the direction of the employer under the  
21 threat of an adverse employment action.