

HOUSE BILL 1981

By Parkinson

AN ACT to amend Tennessee Code Annotated, Title 50,  
Chapter 1, relative to employers and employees.

WHEREAS, the social and economic well-being of the state of Tennessee is dependent upon healthy and productive employees; and

WHEREAS, at least one-third (1/3) of all employees will directly experience health-endangering harassment, intimidation or bullying during their working lives, and this form of mistreatment is more prevalent than sexual harassment; and

WHEREAS, harassment, intimidation or bullying in the workplace can inflict serious harm upon targeted employees, including feelings of shame and humiliation, severe anxiety, depression, suicidal tendencies, impaired immune systems, hypertension, increased risk of cardiovascular disease and symptoms consistent with post-traumatic stress disorder; and

WHEREAS, harassment, intimidation or bullying can also have serious consequences for employers, including reduced employee productivity and morale, higher turnover and absenteeism rates and increases in medical and workers' compensation claims; and

WHEREAS, employees subjected to harassment, intimidation or bullying at work are unlikely to be protected under current law if the employee cannot establish that the mistreatment was motivated by race, color, sex, sexual orientation, national origin, religion, age, or any other constitutionally protected classification; and

WHEREAS, legal protection from harassment, intimidation or bullying at work should not be solely limited to individuals of a protected class; and

WHEREAS, existing workers' compensation plans and common-law tort actions are inadequate to discourage this behavior and fail to provide adequate relief to employees harmed by harassment, intimidation or bullying; and

WHEREAS, it is the intent of the general assembly to provide adequate protections or relief for employees harmed, whether psychologically, physically or economically, by deliberate exposure to harassment, intimidation or bullying, and to provide incentive for employers to prevent and respond to the abusive mistreatment in the workplace; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following language as a new part 5:

50-1-501. This act shall be known and may be cited as the "Healthy Workplace Bill".

50-1-502.

As used in this part, "harassment, intimidation or bullying" means any act that substantially interferes with a person's work performance or creates an intimidating, hostile, or offensive working environment and:

(1) If the act takes place at the employee's workplace or at any employer-sponsored activity, the act has the effect of:

(A) Physically harming an employee or damaging an employee's personal property;

(B) Knowingly placing an employee in reasonable fear of physical harm to the employee or damage their property;

(C) Causing emotional distress to an employee; or

(D) Creating a hostile work environment;

(2) If the act takes place outside of the work place or at an employer-sponsored activity, it is directed specifically at an employee and has the effect of creating a hostile work environment or otherwise creating a substantial disruption to the workplace environment.

50-1-503.

It shall be an unlawful employment practice for:

(1) Any employer or employee to subject another employee to harassment, intimidation or bullying; or

(2) Any employer or employee to retaliate in any manner against an employee who has opposed any unlawful employment practice under this part, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this part, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings, and legal actions.

50-1-504.

It shall be a defense under § 50-1-502:

(1) For an employer, if the employer exercised reasonable care to prevent and correct promptly any unlawful employment practice;

(2) For an employee, if the employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer; and

(3) If the employee acted in violation of § 50-1-502 at the direction of the employer, under actual or implied threat of an adverse employment action.

50-1-505.

(a) Any person injured by any act in violation of this part shall have a civil cause of action in chancery court or circuit court.

(b) An action under this part must be commenced no later than one (1) year after the last act that constitutes the alleged violation of § 50-1-502.

(c) When an employer or employee is found, by a court of competent jurisdiction, to be in violation of § 50-1-502, the court may enjoin such employer or employee from engaging in the unlawful employment practice and may order any other relief necessary,

including, but not limited to, the removal of the offending party from said work environment, medical expenses, compensation for pain and suffering, compensation for emotional distress, punitive damages and attorney's fees.

50-1-506.

(a) Nothing in this part is intended to supersede the rights and obligations provided under the National Labor Relations Act, compiled in 29 U.S.C. § 151 et seq., as amended, any collective bargaining agreement or applicable federal or state labor laws.

(b) Nothing in this part shall be deemed to exempt or relieve any person from any liability, duty, penalty or punishment provided by any other law of this state.

(c) If any employer knowingly, willfully, or intentionally causes a medical or wage loss claim to be paid under health or sickness and accident insurance, or fails to provide reasonable and necessary medical treatment, including a failure to reimburse when the employer knew that the claim arose out of a compensable work-related injury and should have been submitted under its workers' compensation insurance coverage, then a civil penalty of five hundred dollars (\$500) shall be assessed against the employer, and the employer may not offset any sickness and accident income benefit paid to the employee against its temporary total disability benefit payment liability due to the employee pursuant to this part. The commissioner of labor and workforce development has the authority to assess and collect the civil penalty.

(d) This section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

50-1-507.

(a) Each employer, in consultation with the department of labor and workforce development, shall adopt a policy prohibiting harassment, intimidation or bullying by July 1, 2014.

(b) Employers shall include in the policy:

- (1) A statement prohibiting harassment, intimidation or bullying;
- (2) A definition of harassment, intimidation or bullying;
- (3) A description of the type of behavior expected from each employee;
- (4) A statement of the consequences and appropriate remedial action for any employee who commits an act of harassment, intimidation or bullying;
- (5) A procedure for reporting an act of harassment, intimidation or bullying, including a provision that permits a person to anonymously report an act of harassment, intimidation, or bullying. Nothing in this section shall permit formal disciplinary action based solely on an anonymous report;
- (6) A procedure for the prompt investigation of a reported act of harassment, intimidation or bullying;
- (7) A statement of the manner in which an employer shall respond after an act of harassment, intimidation or bullying is reported, investigated and confirmed;
- (8) A statement prohibiting retaliation against any person who reports an act of harassment, intimidation or bullying and specifying the consequences and appropriate remedial action for a person who engages in such retaliation;
- (9) A statement of the consequences and appropriate remedial action for a person found to have intentionally falsely accused another of having committed an act of harassment, intimidation or bullying as a means of retaliation or as a means of harassment, intimidation or bullying;
- (10) A statement of how the policy is to be publicized within the workplace, including a notice that the policy applies to behavior at employer or work-sponsored activities; and

(11) The identification by job title of work officials responsible for ensuring that the policy is implemented.

(c) Each employer shall provide all employees with a copy, by July 1, 2014, of the policy along with information on the policy's implementation, bullying prevention and strategies to address bullying and harassment at the workplace. In addition, each employer shall provide training to employees regarding the policy and appropriate procedures relative to implementation of the policy. The department of labor and workforce development shall provide guidelines for such training and provide recommendations of appropriate, available and free bullying and harassment prevention resources.

SECTION 2. The commissioner is authorized to promulgate rules to effectuate the purposes of this act. All such rules shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. This act shall take effect July 1, 2014, the public welfare requiring it.