

ASSEMBLY BILL

No. 1582

**Introduced by Assembly Member Koretz
(Coauthor: Assembly Member Negrete McLeod)**

February 21, 2003

An act to add Part 12 (commencing with Section 9200) to Division 5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1582, as introduced, Koretz. Abusive work environments.

Existing law makes it an unlawful employment practice for an employer, including any person acting directly or indirectly as an agent of the employer, to harass any employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

This bill would make it an unlawful employment practice to subject an employee to an abusive work environment, as defined, and would specify that an employer, as defined, is vicariously liable for a violation committed by its employee, but would prescribe certain affirmative defenses. The bill would also make it an unlawful employment practice to retaliate against an employee because the employee has opposed an unlawful employment practice under the bill or has made a charge, testified, assisted, or participated in an investigation or proceeding under the bill. The bill would specify that it is enforceable solely by a private right of action, would authorize injunctive relief and would limit an employer's liability for emotional distress to \$25,000 where the unlawful employment practice does not result in a negative employment decision, as defined. The bill would provide that an

aggrieved employee may elect to seek compensation under the bill or the employee’s workers’ compensation remedy, but may not accept workers’ compensation and bring an action under the bill for the same underlying behavior.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The social and economic well-being of the state is
4 dependent upon healthy and productive employees.

5 (2) Surveys and studies have documented that between 16
6 percent and 21 percent of employees directly experience
7 health-endangering workplace bullying, abuse, and harassment,
8 and that this behavior is three times more prevalent than sexual
9 harassment alone.

10 (3) Surveys and studies have documented that abusive work
11 environments can have serious effects on targeted employees,
12 including feelings of shame and humiliation, stress, loss of sleep,
13 severe anxiety, depression, post-traumatic stress disorder, reduced
14 immunity to infection, stress-related gastrointestinal disorders,
15 hypertension, and pathophysiological changes that increase the
16 risk of cardiovascular diseases.

17 (4) Surveys and studies have documented that abusive work
18 environments can have serious consequences for employers,
19 including reduced employee productivity and morale, higher
20 turnover and absenteeism rates, and significant increases in
21 medical and workers’ compensation claims.

22 (5) Unless mistreated employees have been subjected to
23 abusive treatment at work on the basis of race, color, sex, national
24 origin, or age, they are unlikely to have legal recourse to redress
25 such treatment.

26 (6) Legal protection from abusive work environments should
27 not be limited to behavior grounded in protected class status, such
28 as is provided under employment discrimination statutes.

29 (7) Existing workers’ compensation plans and common-law
30 tort actions are inadequate to discourage this behavior or provide



1 adequate redress to employees who have been harmed by abusive
2 work environments.

3 (b) It is therefore the intent of the Legislature in enacting this
4 act:

5 (1) To provide legal redress for employees who have been
6 harmed psychologically, physically, or economically by being
7 deliberately subjected to abusive work environments.

8 (2) To provide a legal incentive for employers to prevent and
9 respond to mistreatment of employees at work.

10 SEC. 2. Part 12 (commencing with Section 9200) is added to
11 Division 5 of the Labor Code, to read:

12

13 PART 12. ABUSIVE WORK ENVIRONMENTS

14

15 9200. As used in this part, the following terms have the
16 following meanings:

17 (a) “Abusive conduct” is conduct of an employer or employee
18 in the workplace, with malice, that a reasonable person would find
19 hostile, offensive, and unrelated to an employer’s legitimate
20 business interests. In considering whether abusive conduct is
21 present, a trier of fact should weigh the severity, nature, and
22 frequency of the conduct. Abusive conduct may include, but is not
23 limited to, repeated infliction of verbal abuse, such as the use of
24 derogatory remarks, insults, and epithets; verbal or physical
25 conduct that a reasonable person would find threatening,
26 intimidating, or humiliating; or the gratuitous sabotage or
27 undermining of a person’s work performance. A single act
28 normally will not constitute abusive conduct, unless especially
29 severe and egregious.

30 (b) “Abusive work environment” is a workplace where an
31 employee is subjected to abusive conduct that is so severe that it
32 causes physical or psychological harm to the employee.

33 (c) “Conduct” is all forms of behavior, including acts and
34 omissions of acts.

35 (d) “Constructive discharge” is (1) abusive conduct, (2) which
36 causes the employee to resign, and (3) where, prior to resigning,
37 the employee brings to the employer’s attention the existence of
38 the abusive conduct, and (4) the employer fails to take reasonable
39 steps to eliminate the abusive conduct.



1 (e) “Employee” is an individual employed by an employer,
2 whereby the individual’s labor is either controlled by the employer
3 or the individual is economically dependent upon the employer in
4 return for labor rendered.

5 (f) “Employer” includes all individuals and private
6 corporations, partnerships, associations, and unincorporated
7 organizations that compensate individuals in return for
8 performing labor. “Employer” also includes the state or any
9 subdivision thereof, any county, city, city and county, including
10 any charter city or county, and any school district, community
11 college district, municipal or public corporation, political
12 subdivision, the California State University and the University of
13 California.

14 (g) “Malice” is the desire to see another person suffer
15 psychological, physical, or economic harm, without legitimate
16 cause or justification. Malice may be inferred from the presence
17 of one or more factors such as outward expressions of hostility,
18 harmful conduct inconsistent with an employer’s legitimate
19 business interests, a continuation of harmful, illegitimate conduct
20 after the complainant requests that it cease or demonstrates
21 outward signs of emotional or physical distress in the face of the
22 conduct, or attempts to exploit the complainant’s known
23 psychological or physical vulnerability.

24 (h) “Negative employment decision” is a termination,
25 constructive discharge, demotion, unfavorable reassignment,
26 refusal to promote, or disciplinary action.

27 (i) “Physical harm” is the material impairment of a person’s
28 physical health or bodily integrity, as documented by a competent
29 physician or supported by competent expert evidence at trial.

30 (j) “Psychological harm” is the material impairment of a
31 person’s mental health, as documented by a competent
32 psychologist, psychiatrist, or psychotherapist, or supported by
33 competent expert evidence at trial.

34 9201. It is an unlawful employment practice under this part to
35 subject an employee to an abusive work environment.

36 9202. An employer is vicariously liable for an unlawful
37 employment practice in violation of this part committed by its
38 employee.

39 9203. It is an affirmative defense to an action for an abusive
40 work environment that the employer exercised reasonable care to



1 prevent and promptly correct the abusive conduct and the
2 aggrieved employee unreasonably failed to take advantage of
3 appropriate preventive or corrective opportunities provided by the
4 employer. This defense is not available when abusive conduct
5 culminates in a negative employment decision.

6 9204. It is an affirmative defense to an action for an abusive
7 work environment that the complaint is grounded primarily upon
8 a negative employment decision made consistent with an
9 employer's legitimate business interests, such as a termination or
10 demotion based on an employee's poor performance, or the
11 complaint is grounded primarily upon an employer's reasonable
12 investigation of potentially illegal or unethical activity.

13 9205. It is an unlawful employment practice under this part to
14 retaliate in any manner against an employee because he or she has
15 opposed any unlawful employment practice under this part or
16 because he or she has made a charge, testified, assisted, or
17 participated in any manner in an investigation or proceeding under
18 this part, including, but not limited to, internal proceedings,
19 arbitration or mediation proceedings, and legal actions.

20 9206. Where a defendant has been found to have committed
21 an unlawful employment practice under this part, the court may
22 enjoin the defendant from engaging in the unlawful employment
23 practice and may order any other relief that is deemed appropriate,
24 including, but not limited to, reinstatement, removal of the
25 offending party from the complainant's work environment, back
26 pay, front pay, medical expenses, compensation for emotional
27 distress, punitive damages, and attorney's fees.

28 9207. Where an employer has been found to have committed
29 an unlawful employment practice under this part that did not result
30 in a negative employment decision, the employer's liability for
31 damages for emotional distress may not exceed twenty-five
32 thousand dollars (\$25,000) and the employer may not be liable for
33 punitive damages. This section does not apply to individually
34 named co-employee defendants.

35 9208. This part may be enforced solely by a private right of
36 action.

37 9209. An action commenced under this part may be
38 commenced no later than one year after the last act that comprises
39 the alleged unlawful employment practice.



1 9210. Nothing in this part may be deemed to exempt or relieve
2 any person from any liability, duty, penalty, or punishment
3 provided by any other law of this state.

4 9211. The remedies in this part are in addition to remedies
5 under the workers' compensation laws. However, a person who
6 believes that he or she has been subjected to an unlawful
7 employment practice under this part may elect to accept workers'
8 compensation benefits in connection with the underlying behavior
9 in lieu of bringing an action under this part. A person who elects
10 to accept workers' compensation may not bring an action under
11 this part for the same underlying behavior.

