

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2467:

Gilbert

AS INTRODUCED

An Act relating to labor; enacting the Abusive Work Environment Act; providing definitions; making certain actions unlawful violations; providing for employer liability; providing defenses; prohibiting retaliation for certain actions; providing remedies for employer violations; providing for a private right of action; providing certain time limitation of action; allowing workers' compensation remedies under certain circumstances; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600 of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Abusive Work Environment Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 601 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. As used in the Abusive Work Environment Act:

1. "Abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. In considering whether abusive conduct is present, a trier of fact should weigh the severity, nature, and frequency of the conduct. Abusive conduct may include, but is not limited to, repeated infliction of verbal abuse, such as the use of

derogatory remarks, insults, and epithets; verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; or the gratuitous sabotage or undermining of a person's work performance. A single act normally will not constitute abusive conduct, unless especially severe and egregious.

2. "Abusive work environment" means a workplace where an employee is subjected to abusive conduct that is so severe that it causes physical or psychological harm to the employee.

3. "Conduct" means all forms of behavior, including acts and omissions of acts.

4. "Constructive discharge" means abusive conduct, which causes the employee to resign, and where, prior to resigning, the employee brings to the attention of the employer the existence of the abusive conduct, and the employer fails to take reasonable steps to eliminate the abusive conduct.

5. "Employee" means an individual employed by an employer, whereby the labor of the individual is either controlled by the employer or the individual is economically dependent upon the employer in return for labor rendered.

6. "Employer" means all individuals and private corporations, partnerships, associations, and unincorporated organizations that compensate individuals in return for performing labor. Employer also includes the state or any subdivision thereof, any county, municipality, and any school district, community college, municipal or public corporation, political subdivision, and any institution of higher education.

7. "Malice" means the desire to see another person suffer psychological, physical, or economic harm, without legitimate cause or justification. Malice may be inferred from the presence of one or more factors such as outward expressions of hostility, harmful conduct inconsistent with a legitimate business interest of an

employer, a continuation of harmful, illegitimate conduct after the complainant requests that it cease or demonstrates outward signs of emotional or physical distress in the face of the conduct, or attempts to exploit the known psychological or physical vulnerability of the complainant.

8. "Negative employment decision" means a termination, constructive discharge, demotion, unfavorable reassignment, refusal to promote, or disciplinary action.

9. "Physical harm" means the material impairment of physical health or bodily integrity of a person, as documented by a competent physician or supported by competent expert evidence at trial.

10. "Psychological harm" means the material impairment of mental health of a person, as documented by a competent psychologist, psychiatrist, or psychotherapist, or supported by competent expert evidence at trial.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 602 of Title 40, unless there is created a duplication in numbering, reads as follows:

It is an unlawful employment practice under the Abusive Work Environment Act to subject an employee to an abusive work environment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 603 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An employer is vicariously liable for an unlawful employment practice in violation of the Abusive Work Environment Act committed by its employee.

B. It is an affirmative defense to an action for an abusive work environment that the employer exercised reasonable care to prevent and promptly correct the abusive conduct and the aggrieved employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer.

This defense is not available when abusive conduct culminates in a negative employment decision.

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 604 of Title 40, unless there is created a duplication in numbering, reads as follows:

It is an unlawful employment practice under the Abusive Work Environment Act to retaliate in any manner against an employee because the employee has opposed any unlawful employment practice under this act, or because the employee has made a charge, and testified, assisted, or participated in any manner in an investigation or proceeding under this act, including, but not limited to, internal proceedings, arbitration or mediation proceedings, and legal actions.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 605 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Where a defendant has been found to have committed an unlawful employment practice under the Abusive Work Environment Act, the court may enjoin the defendant from engaging in the unlawful employment practice and may order any other relief that is deemed appropriate, including, but not limited to, reinstatement, removal of the offending party from the work environment of the complainant, back pay, front pay, medical expenses, compensation for emotional distress, punitive damages, and reasonable attorney fees.

B. Where an employer has been found to have committed an unlawful employment practice under the Abusive Work Environment Act that did not result in a negative employment decision, the liability for damages of the employer for emotional distress may not exceed Twenty-five Thousand Dollars (\$25,000.00), and the employer may not be liable for punitive damages.

C. This section shall not apply to individually named coemployee defendants.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 606 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Abusive Work Environment Act may be enforced solely by a private right of action.

B. An action commenced under the Abusive Work Environment Act may be commenced no later than one (1) year after the last act that comprises the alleged unlawful employment practice.

C. Nothing in the Abusive Work Environment Act may be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any other law of this state.

D. The remedies in the Abusive Work Environment Act are in addition to remedies under the workers' compensation laws. However, a person who believes that they have been subjected to an unlawful employment practice under the Abusive Work Environment Act may elect to accept workers' compensation benefits in connection with the underlying behavior in lieu of bringing an action under this act. A person who elects to accept workers' compensation may not bring an action under this act for the same underlying behavior.

SECTION 8. This act shall become effective November 1, 2004.

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