

By: Coleman

H.B. No. 3226

A BILL TO BE ENTITLED

AN ACT

relating to addressing abusive conduct in the workplace; creating a private right of action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subtitle A, Title 2, Labor Code, is amended to read as follows:

SUBTITLE A. EMPLOYMENT DISCRIMINATION AND ABUSIVE CONDUCT IN THE WORKPLACE

SECTION 2. Subtitle A, Title 2, Labor Code, is amended by adding Chapter 23 to read as follows:

CHAPTER 23. ABUSIVE CONDUCT IN THE WORKPLACE

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "Abusive conduct" includes an act or omission that a reasonable person would find abusive based on the severity, nature, and frequency of the conduct. The term includes:

(A) repeated verbal abuse, including the use of derogatory remarks, insults, and epithets;

(B) repeated verbal, nonverbal, or physical conduct of a threatening, intimidating, or humiliating nature;

(C) repeated sabotage or undermining of an employee's work performance; and

(D) a single act of abusive conduct that is especially severe and egregious.

(2) "Abusive work environment" means a work

1 environment in which an employer or an employee, acting with intent
2 to cause pain or distress, subjects an employee to abusive conduct
3 that causes physical harm or psychological harm.

4 (3) "Adverse employment action" includes termination,
5 demotion, unfavorable reassignment, failure to promote,
6 disciplinary action, reduction in compensation, and constructive
7 discharge.

8 (4) "Constructive discharge" occurs when:

9 (A) an employee reasonably believes the employee
10 has been subjected to an abusive work environment;

11 (B) the employee resigns because of the abusive
12 work environment; and

13 (C) the employer was aware of the abusive work
14 environment before the employee resigns but failed to stop the
15 abusive conduct.

16 (5) "Physical harm" means the impairment of a person's
17 physical health or bodily integrity, as established by competent
18 evidence.

19 (6) "Psychological harm" means the impairment of a
20 person's mental health, as established by competent evidence.

21 Sec. 23.002. UNLAWFUL EMPLOYMENT PRACTICES. An employer
22 commits an unlawful employment practice if the employer:

23 (1) subjects an employee, or permits another employee
24 to subject the employee, to an abusive work environment;

25 (2) permits the constructive discharge of an employee;

26 or

27 (3) retaliates in any manner against an employee who,

1 under this chapter:

2 (A) opposes an unlawful employment practice;

3 (B) makes or files a charge;

4 (C) files a complaint; or

5 (D) testifies, assists, or participates in any
6 manner in an investigation, proceeding, or hearing.

7 Sec. 23.003. EMPLOYER LIABILITY; DEFENSES. (a) An employer
8 is liable for an unlawful employment practice under this chapter.

9 (b) An employer is vicariously liable for the abusive
10 conduct of an employee.

11 (c) A court shall consider abusive conduct that exploits an
12 employee's known psychological or physical illness or disability as
13 an aggravating factor.

14 (d) It is a defense to liability under this section that:

15 (1) the employer did not take an adverse employment
16 action against the complainant and:

17 (A) the employer exercised reasonable care to
18 prevent and promptly correct abusive conduct; and

19 (B) the complainant unreasonably failed to take
20 advantage of appropriate preventive or corrective opportunities
21 provided by the employer; or

22 (2) the employer took an adverse employment action
23 against the complainant because of:

24 (A) the complainant's poor performance or
25 misconduct; or

26 (B) the employer's economic necessity,
27 reasonable performance evaluation of the complainant, or

1 reasonable investigation of the complainant's potentially illegal
2 or unethical activity.

3 Sec. 23.004. EMPLOYEE LIABILITY; DEFENSE. (a) An employee
4 is individually liable for abusive conduct under this chapter.

5 (b) A court shall consider abusive conduct that exploits an
6 employee's known psychological or physical illness or disability as
7 an aggravating factor.

8 (c) It is a defense to liability that the employee committed
9 the abusive conduct at the direction of the employer under actual or
10 implied threat of an adverse employment action.

11 Sec. 23.005. INJUNCTION; EQUITABLE RELIEF. (a) On finding
12 that a respondent engaged in an unlawful employment practice or
13 abusive conduct as alleged in a complaint, a court may:

14 (1) prohibit by injunction the respondent from
15 engaging in an unlawful employment practice or abusive conduct; and

16 (2) order additional equitable relief as may be
17 appropriate.

18 (b) Additional equitable relief may include:

19 (1) reinstating the complainant;

20 (2) removing the party that engaged in abusive conduct
21 from the complainant's work environment;

22 (3) back pay;

23 (4) front pay;

24 (5) medical expenses;

25 (6) compensation for pain and suffering;

26 (7) compensation for emotional distress;

27 (8) punitive damages; and

1 (9) attorney's fees.

2 (c) An employer who is liable for an unlawful employment
3 practice under this chapter that does not include an adverse
4 employment action is not liable for emotional distress damages and
5 punitive damages unless the actionable conduct is extreme and
6 outrageous.

7 Sec. 23.006. PRIVATE RIGHT OF ACTION; LIMITATIONS. (a)
8 This chapter may only be enforced by a private right of action.

9 (b) An action under this chapter must be commenced not later
10 than the first anniversary of the last act that constitutes the
11 alleged unlawful employment practice or abusive conduct.

12 Sec. 23.007. EFFECT ON OTHER LEGAL RELATIONSHIPS. (a) This
13 chapter does not supersede rights and obligations provided under
14 collective bargaining laws and regulations.

15 (b) The remedies provided in this chapter are in addition to
16 any remedy provided under any other law. This chapter does not
17 relieve any person from any liability, duty, penalty, or punishment
18 provided by any other law.

19 (c) Notwithstanding Subsection (b), an employee's payments
20 of workers' compensation shall be reimbursed from compensation paid
21 under this chapter if an employee receives workers' compensation
22 under this chapter and Subtitle A, Title 5:

23 (1) for medical costs for the same injury or illness;
24 or

25 (2) in cash payments for the same period the employee
26 is not working as a result of the compensable injury or illness or
27 the unlawful employment practice or abusive conduct.

1 SECTION 3. The change in law made by this Act applies only
2 to a cause of action that accrues on or after the effective date of
3 this Act. A cause of action that accrues before the effective date
4 of this Act is governed by the law in effect immediately before that
5 date, and that law is continued in effect for that purpose.

6 SECTION 4. This Act takes effect September 1, 2015.