88R11206 SCP-F

By:  Blanco S.B. No. 2253

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 24 to read as follows:

CHAPTER 24. ABUSIVE CONDUCT IN WORKPLACE

Sec. 24.001.  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 environment in which an employer or an employee, acting with intent to cause pain or distress, subjects an employee to abusive conduct that causes physical harm or psychological harm.

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

(4)  "Constructive discharge" occurs when:

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

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

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

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

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

Sec. 24.002.  UNLAWFUL EMPLOYMENT PRACTICES. An employer commits an unlawful employment practice if the employer:

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

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

(3)  retaliates in any manner against an employee who, under this chapter:

(A)  opposes an unlawful employment practice;

(B)  makes or files a charge;

(C)  files a complaint; or

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

Sec. 24.003.  EMPLOYER LIABILITY; DEFENSES. (a) An employer is liable for an unlawful employment practice under this chapter.

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

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

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

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

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

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

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

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

(B)  the employer's economic necessity, reasonable performance evaluation of the complainant, or reasonable investigation of the complainant's potentially illegal or unethical activity.

Sec. 24.004.  EMPLOYEE LIABILITY; DEFENSE. (a) An employee is individually liable for abusive conduct under this chapter.

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

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

Sec. 24.005.  INJUNCTION; EQUITABLE RELIEF. (a) On finding that a respondent engaged in an unlawful employment practice or abusive conduct as alleged in a complaint, a court may:

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

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

(b)  Additional equitable relief may include:

(1)  reinstating the complainant;

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

(3)  back pay;

(4)  front pay;

(5)  medical expenses;

(6)  compensation for pain and suffering;

(7)  compensation for emotional distress;

(8)  punitive damages; and

(9)  attorney's fees.

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

Sec. 24.006.  PRIVATE RIGHT OF ACTION; LIMITATIONS. (a) This chapter may only be enforced by a private right of action.

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

Sec. 24.007.  EFFECT ON OTHER LEGAL RELATIONSHIPS. (a) This chapter does not supersede rights and obligations provided under collective bargaining laws and regulations.

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

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

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

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

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

SECTION 4.  This Act takes effect September 1, 2023.