

1 SENATE BILL NO. 196

2 INTRODUCED BY J. WINDY BOY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR HEALTHY WORKPLACES BY PROVIDING
5 REMEDIES TO ADDRESS HOSTILE WORK ENVIRONMENTS; PROVIDING PROCESSES FOR SCHOOLS
6 TO MAINTAIN HEALTHY WORK ENVIRONMENTS BY PROVIDING REMEDIES FOR BULLYING OR ABUSIVE
7 CONDUCT; PROVIDING AN AFFIRMATIVE DEFENSE FOR EMPLOYERS; PROHIBITING RETALIATION;
8 REQUIRING AN EMPLOYER TO RESPOND TO THIRD-PARTY ACTS OF MALICE; ESTABLISHING
9 APPLICABILITY TO EMPLOYMENT PRACTICES NOT COVERED BY EXISTING STATE LAWS ON HUMAN
10 RIGHTS OR WRONGFUL DISCHARGE; EXPANDING THE DESCRIPTION OF THE CRIME OF MALICIOUS
11 INTIMIDATION OR HARASSMENT TO INCLUDE PSYCHOLOGICAL HARM; AND AMENDING SECTIONS
12 39-2-913 AND 45-5-221, MCA."

13
14 WHEREAS, workplaces benefit from an environment in which people can work efficiently without fear
15 of being bullied, abused, or harassed by fellow employees, customers, clients, or others with whom they are in
16 contact during a workday; and

17 WHEREAS, hostile work environments can impact employers as well as employees by increasing
18 workers' compensation claims, decreasing productivity, and potentially increasing turnover and absenteeism; and

19 WHEREAS, existing human rights laws address only protected classes under the Civil Rights Act of 1964,
20 Title IX of the Education Amendments of 1972, the Rehabilitation Act of 1973, and the Americans with Disabilities
21 Act of 1990, meaning fewer remedies exist for a member of a nonprotected class; and

22 WHEREAS, various studies have found that targeted students or employees may suffer long-term
23 psychological impairment, including depression and the effects of stress, and that these impacts often extend to
24 their families; and

25 WHEREAS, resolution of concerns about unhealthy work environments are typically best addressed as
26 early as possible on an objective basis without costly litigation.

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28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

29
30 NEW SECTION. **Section 1. Legislative intent -- application of Healthy and Safe Workplace Act.**

1 It is the intent of the legislature that a school provide a healthy, positive environment in which to study and to
2 work. To promote that environment, the provisions of [sections 3 through 8] apply to schools in addition to other
3 remedies in law.

4
5 **NEW SECTION. Section 2. Procedures to address bullying or abusive conduct in schools.** (1) A
6 student or an employee of a school may file a complaint of bullying or abusive conduct, as defined in [section 5],
7 with the county superintendent of schools or ask the county superintendent of schools to appoint an outside
8 mediator or a mediator to which all parties agree. A school district's Title IX coordinator may serve as a mediator
9 for any aggrieved party not otherwise served by the coordinator. The county superintendent of schools shall seek
10 to resolve the complaint using remedies developed at the local level. If there are no remedies at the local level,
11 the aggrieved party may pursue the remedies in [section 6].

12 (2) For the purposes of this section, "bullying" means repeated verbal or physical conduct or written
13 communication or electronic communication, as defined in 45-8-213, in public or in private against a student or
14 an employee of a school if the student or employee targeted by the activity has requested the activity to stop and
15 if a reasonable person would find the activity hostile, intimidating, offensive, humiliating, or an abuse of authority.
16 Repeated incidences of certain behaviors are evidence of bullying, including provocative or dehumanizing name
17 calling, use of belittling language, exclusion from requisite training, physical isolation, and the obscuring of
18 information or materials necessary to complete a task or achieve productive work.

19
20 **NEW SECTION. Section 3. Short title.** [Sections 3 through 8] may be cited as the "Healthy and Safe
21 Workplace Act".

22
23 **NEW SECTION. Section 4. Legislative intent.** It is the intent of the legislature to implement Article II,
24 section 4, of the Montana constitution upholding the dignity of the human being, in part, by encouraging a healthy
25 and safe workplace where employers and employees are held accountable within the workplace for abusive
26 conduct not covered by Title 39, chapter 71, or Title 49, chapters 2 and 3, and are encouraged to find remedies
27 to combat abusive conduct.

28
29 **NEW SECTION. Section 5. Definitions.** For the purposes of [sections 3 through 8], the following
30 definitions apply:

- 1 (1) (a) "Abusive conduct" means repeated verbal or physical conduct, written communication, or
2 electronic communication, as defined in 45-8-213, in public or in private by an employer or employee in a
3 workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's
4 legitimate business interests. Abusive conduct may include but is not limited to repeated infliction of:
- 5 (i) derogatory remarks, insults, and epithets;
6 (ii) verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating;
7 or
8 (iii) the gratuitous sabotage or undermining of a person's work performance, including deliberate
9 exclusion from decisionmaking opportunities that are critical for a job or exclusion from requisite training.
- 10 (b) The term does not include a single act unless especially severe and egregious.
- 11 (2) "Aggrieved party" means a person who seeks to file a complaint or has filed a complaint regarding
12 abusive conduct.
- 13 (3) "Conduct" means all forms of behavior, including acts and omissions of acts.
- 14 (4) "Constructive discharge" has the meaning provided in 39-2-903.
- 15 (5) "Employee" means an individual hired by an employer or an elected official, an appointed official, or
16 an individual acting on behalf of a governmental entity in any official capacity temporarily or permanently in the
17 service of the governmental entity whether with or without compensation.
- 18 (6) "Employer" has the meaning provided in 39-71-117. An employer may be an employee for the
19 purposes of [sections 3 through 8] but only as an aggrieved party.
- 20 (7) "Governmental entity" means the state, an agency as defined in 2-3-102, or any county, city,
21 municipal corporation, school district, special improvement or taxing district, or other political subdivision or public
22 corporation, including a local government entity as defined in 2-7-501.
- 23 (8) "Hostile work environment" means a workplace where an employee is subjected to abusive conduct
24 that is so severe as to cause physical harm or psychological harm to the employee and that is based on race,
25 religion, sex, national origin, age, disability, veteran status, sexual orientation, political affiliation, citizenship
26 status, marital status, family responsibilities, personal appearance, or a protected status established by the
27 employer in written staff guidelines.
- 28 (9) "Malice" means the desire to see another person suffer physical, psychological, or economic harm.
29 Malice may be inferred from the presence of factors such as:
- 30 (a) outward expressions of hostility;

- 1 (b) harmful conduct inconsistent with the employer's legitimate business interests;
2 (c) a continuation of harmful, illegitimate conduct after the aggrieved party requests that the conduct
3 cease or demonstrates outward signs of physical or emotional distress in the face of the conduct; or
4 (d) attempts to exploit an employee's known physical or psychological vulnerability.

5 (10) "Negative employment decision" means a termination, constructive discharge, demotion, unfavorable
6 reassignment, refusal to promote, or disciplinary action.

7 (11) "Physical harm" means the material impairment of a person's physical health or bodily integrity as
8 documented by a competent physician or supported by competent expert evidence at trial.

9 (12) "Psychological harm" means the impairment of a person's mental health as documented by a
10 competent psychologist, psychiatrist, or psychotherapist or as supported by testimony by a competent expert at
11 trial.

12

13 **NEW SECTION. Section 6. Remedies -- affirmative defense -- retaliation ban.** (1) An employee who
14 complains of abusive conduct contributing to a hostile work environment shall notify an employer in writing,
15 request correction by the employer of the situation considered to create a hostile work environment, work with
16 an impartial review committee or mediator appointed to review the case, and take advantage of appropriate
17 preventive or corrective opportunities provided by the employer.

18 (2) An employer who receives a complaint of abusive conduct contributing to a hostile work environment
19 shall:

20 (a) seek to remedy or prevent abusive conduct by providing employees and others in the workplace with
21 appropriate education, including but not limited to training, appropriately placed signs, or brochures;

22 (b) take action to promptly investigate the complaint by providing copies of the written complaint to all
23 parties to the complaint and establishing an impartial review committee or a mediator agreed to by parties to the
24 complaint within 1 month of the complaint being filed;

25 (c) retain the employment status of any party to a complaint while the complaint is being reviewed by
26 the impartial review committee or mediator; and

27 (d) implement recommendations from the impartial review committee or mediator or explain to the
28 aggrieved party why followthrough is not being done.

29 (3) An impartial review committee or mediator assigned to investigate and review a complaint shall
30 interview coworkers or colleagues to determine the validity of the complaint and receive suggestions to address

1 the complaint. The impartial review committee and the mediator shall then provide the employer with its
2 recommendations.

3 (4) If efforts to resolve a complaint are unsatisfactory, an aggrieved party may:

4 (a) request a hearing before the board of personnel appeals, if applicable;

5 (b) if a member of a class covered by Title 49, chapter 2, part 3, file a complaint as provided in 49-2-501;

6 or

7 (c) initiate a private right of action in a court of competent jurisdiction.

8 (5) For the purposes of [sections 3 through 8], an employer has an affirmative defense if:

9 (a) the employer can provide evidence of meeting the requirements of subsection (2);

10 (b) the abusive conduct did not culminate in a negative employment decision; or

11 (c) the complaint is grounded primarily upon:

12 (i) a negative employment decision made consistent with the employer's legitimate business interests,
13 such as a termination or a demotion based on an employee's poor performance; or

14 (ii) an employer's reasonable investigation of potentially illegal or unethical activity.

15 (6) Corrective action by an employer may not include retaliation against the aggrieved party unless the
16 provisions of subsection (5)(c) apply. For the purposes of this section, retaliation is prohibited as provided in
17 49-2-301.

18

19 **NEW SECTION. Section 7. Third-party malice.** An employer who receives a complaint from an
20 employee about repeated acts of malice by a third party toward the employee while the employee is performing
21 duties assigned by the employer has a duty to investigate, retain the employment status of the employee while
22 the investigation is being undertaken, and take remedial action if the investigation indicates third-party acts of
23 malice toward an employee.

24

25 **NEW SECTION. Section 8. Scope.** (1) The provisions of [sections 3 through 8] are intended to address
26 abusive conduct in the workplace outside the scope of Title 39, chapter 2, part 9, Title 39, chapter 71, or Title 49,
27 chapters 2 and 3. The remedies offered by Title 39, chapter 2, part 9, Title 39, chapter 71, or Title 49, chapters
28 2 and 3, are distinct remedies and do not conflict with an action under [sections 3 through 8].

29 (2) An action brought under [sections 3 through 8] does not preclude an action under federal law.

30 (3) A private right of action under [sections 3 through 8] does not preclude a separate action brought

1 under 45-5-221.

2

3 **Section 9.** Section 39-2-913, MCA, is amended to read:

4 **"39-2-913. Preemption of common-law remedies.** Except as provided in [sections 3 through 8] and
5 this part, no claim for discharge may arise from tort or express or implied contract."

6

7 **Section 10.** Section 45-5-221, MCA, is amended to read:

8 **"45-5-221. Malicious intimidation or harassment relating to civil or human rights -- penalty.** (1)

9 A person commits the offense of malicious intimidation or harassment when, because of another person's race,
10 creed, religion, color, national origin, or involvement in civil rights or human rights activities, the person purposely
11 or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

12 (a) causes bodily injury to another;

13 (b) causes reasonable apprehension of bodily injury in another; ~~or~~

14 (c) damages, destroys, or defaces any property of another or any public property; or

15 (d) causes serious psychological harm as defined in [section 5].

16 (2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any
17 word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of
18 another person without the other person's permission.

19 (3) A person convicted of the offense of malicious intimidation or harassment shall be imprisoned in the
20 state prison for a term not to exceed 5 years or be fined an amount not to exceed \$5,000, or both."

21

22 NEW SECTION. **Section 11. Codification instruction.** (1) [Sections 1 and 2] are intended to be
23 codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 and 2].

24 (2) [Sections 3 through 8] are intended to be codified as an integral part of Title 39, and the provisions
25 of Title 39 apply to [sections 3 through 8].

26

27 NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
29 the part remains in effect in all valid applications that are severable from the invalid applications.

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