

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1352

(SENATE AUTHORS: LATZ and Dibble)

DATE	D-PG	OFFICIAL STATUS
05/02/2011	1607	Introduction and first reading Referred to Jobs and Economic Growth

A bill for an act
relating to employment; prohibiting abusive work environment practices and
establishing remedies; proposing coding for new law in Minnesota Statutes,
chapter 181.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[181.987] ABUSIVE WORK ENVIRONMENT.**

Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

(b) "Abusive conduct" means conduct, including acts or omissions, that a reasonable person would find hostile, based on the severity, nature, and frequency of the conduct. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, or epithets; verbal or physical conduct of a threatening, intimidating, or humiliating nature; the sabotage or undermining of an employee's work performance; or attempts to exploit an employee's known psychological or physical vulnerability. A single act is not abusive conduct unless the act is severe and egregious.

(c) "Abusive work environment" means an environment in which an employer or employee acts with malice to subject an employee to abusive conduct so severe that it causes tangible harm to the employee.

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

(e) "Constructive discharge" means circumstances in which: (1) an employee reasonably believes the employee was subjected to abusive conduct; (2) the employee resigned because of that abusive conduct; and (3) before resigning, the employee brought

to the employer's attention the existence of the abusive conduct and the employer failed to take reasonable steps to correct the situation.

(f) "Malice" means the intent to cause pain, injury, or distress to another.

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

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

(i) "Tangible harm" means physical harm or psychological harm.

Subd. 2. Prohibited employer conduct. An employer must not:

(1) subject an employee to an abusive work environment; or

(2) take an adverse employment action or otherwise retaliate against an employee who opposes subjecting an employee to an abusive work environment or who makes a charge, testifies, assists, or participates in an investigation or proceeding under this section, including internal complaints and proceedings, arbitration and mediation, collective bargaining, or civil actions.

Subd. 3. Prohibited employee conduct. An employee must not subject a co-employee to an abusive work environment. It is an affirmative defense for an employee to establish that the employee acted under the direction of the employer and under threat of an adverse employment action.

Subd. 4. Employer vicarious liability. An employer is vicariously liable for a violation of subdivision 3. If an alleged violation does not include an adverse employment action, it is an affirmative defense for an employer to establish that:

(1) the employer exercised reasonable care to prevent and correct promptly any actionable behavior; and

(2) the complainant employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer.

Subd. 5. Affirmative defenses. It is an affirmative defense that:

(1) the complaint is based on an adverse employment action reasonably made for poor performance, misconduct, or economic necessity;

(2) the complaint is based on a reasonable performance evaluation; or

(3) the complaint is based on a defendant's reasonable investigation about potentially illegal or unethical activity.

Subd. 6. Remedies; procedures. (a) If a defendant is found to have violated this section, a court may enjoin the defendant from engaging in a violation and may order any other relief that is deemed appropriate, including reinstatement, removal of the offending

party from the complainant's work environment, back pay, front pay, medical expenses, compensation for emotional distress, punitive damages, and attorney fees.

(b) If an employer is found to have violated this section and the violation did not culminate in an adverse employment action, the employer's liability for damages for emotional distress may not exceed \$25,000, and the employer is not subject to punitive damages. This paragraph does not apply to individually named employee defendants.

(c) This section may be enforced solely by a private action.

(d) An action under this section must be commenced no later than one year after the last act that constitutes the alleged violation of this section.

Subd. 7. **Remedies cumulative; effect on other laws.** (a) Subject to paragraph (b), the remedies available in this section are in addition to any remedies available under other law and this section does not relieve any person from a liability, duty, penalty, or punishment provided by any other law.

(b) If an employee receives compensation under chapter 176 for medical costs for the same injury or illness for which compensation is paid under this section, or for wages for the same period of time that the employee did not work as a result of a compensable injury or illness resulting from a violation of this section, the payments under chapter 176 must be reimbursed from compensation paid to the employee under this section.