

FIRST REGULAR SESSION

HOUSE BILL NO. 376

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WILDBERGER (Sponsor) AND YOUNG (Co-sponsor).

Read 1st time January 11, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0675L.01I

AN ACT

To amend chapter 292, RSMo, by adding thereto one new section relating to unlawful employment practices.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 292, RSMo, is amended by adding thereto one new section, to be known as section 292.660, to read as follows:

292.660. 1. As used in this section the following terms shall mean:

(1) "Abusive conduct" is 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" is 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" is all forms of behavior, including acts and omissions of acts;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (4) "Constructive discharge" is abusive conduct which causes the employee to
16 resign and where prior to resigning, the employee brings to the employer's attention the
17 existence of the abusive conduct, and the employer fails to take reasonable steps to
18 eliminate the abusive conduct;

19 (5) "Employee" is an individual employed by an employer, whereby the
20 individual's labor is either controlled by the employer or the individual is economically
21 dependent upon the employer in return for labor rendered;

22 (6) "Employer" includes individuals, governments, governmental agencies,
23 corporations, partnerships, associations, and unincorporated organizations that
24 compensate individuals in return for performing labor. Employer also includes the state
25 or any subdivision of the state, any county, city, city and county, including any charter city
26 or county, and any school district, community college, municipal or public corporation,
27 political subdivision, and any state institution of higher education;

28 (7) "Malice" is the desire to see another person suffer psychological, physical, or
29 economic harm, without legitimate cause or justification. Malice may be inferred from the
30 presence of factors such as, outward expression of hostility, harmful conduct inconsistent
31 with an employer's legitimate business interests, a continuation of harmful illegitimate
32 conduct after the complainant requests that it cease or demonstrates outward signs of
33 emotional or physical distress in the face of the conduct, or attempts to exploit the
34 complainant's known psychological or physical vulnerability;

35 (8) "Negative employment decision" is a termination, constructive discharge,
36 demotion, unfavorable reassignment, refusal to promote, or disciplinary action;

37 (9) "Physical harm" is the material impairment of a person's physical health or
38 bodily integrity, as documented by a competent physician or supported by competent
39 expert evidence at trial;

40 (10) "Psychological harm" is the material impairment of a person's mental health,
41 as documented by a competent psychologist, psychiatrist, or supported by competent
42 expert evidence at trial.

43 2. It is an unlawful employment practice under this section to subject an employee
44 to an abusive work environment.

45 3. An employer is vicariously liable for an unlawful employment practice in
46 violation of this section committed by its employee.

47 4. It is an affirmative defense to an action for an abusive work environment that
48 the employer exercised reasonable care to prevent and promptly correct the abusive
49 conduct and the aggrieved employee unreasonably failed to take advantage of appropriate

50 preventive or corrective opportunities provided by the employer. This defense is not
51 available when the abusive conduct culminates in a negative employment decision.

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

57 6. It is an unlawful employment practice under this section to retaliate in any
58 manner against an employee because he or she has opposed any unlawful employment
59 practice under this section, or because he or she has made a charge, testified, assisted, or
60 participated in any internal proceedings, arbitration and mediation proceedings, and legal
61 actions.

62 7. Where a defendant has been found to have committed an unlawful employment
63 practice under this section, the court may enjoin the defendant from engaging in the
64 unlawful employment practice and may order any other relief that is deemed appropriate,
65 including, but not limited to, reinstatement, removal of the offending party from the
66 complainant's work environment, back pay, front pay, medical expenses, compensation for
67 emotional distress, punitive damages, and attorneys' fees.

68 8. Where an employer has been found to have committed an unlawful employment
69 practice under this section that did not result in a negative employment decision, the
70 employer's liability for damages for emotional distress may not exceed twenty-five
71 thousand dollars and the employer may not be liable for punitive damages. This
72 subsection does not apply to individually named co-employee defendants.

73 9. The provisions of this section may be enforced solely by a private right of action.

74 10. An action commenced under this section may be commenced no later than one
75 year after the last act that comprises the alleged unlawful employment practice.

76 11. Nothing in this section may be deemed to exempt or relieve any person from any
77 liability, duty, penalty, or punishment provided by any other law of this state.

78 12. The remedies in this section are in addition to remedies under workers'
79 compensation laws. However, a person who believes that he or she has been subjected to
80 an unlawful employment practice under this section may elect to accept workers'
81 compensation benefits in connection with the underlying behavior in lieu of bringing an
82 action under this section. A person who elects to accept workers' compensation may not
83 bring an action under this section for the same underlying behavior.

✓