



Rep. Constance A. Howard

**Filed: 3/8/2011**

09700HB0942ham001

LRB097 03762 AJ0 52008 a

1 AMENDMENT TO HOUSE BILL 942

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 942 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Abusive Work Environment Act.

6 Section 5. Findings and purpose.

7 (a) Findings. The General Assembly finds that:

8 (1) The social and economic well-being of the State is  
9 dependent upon healthy and productive employees;

10 (2) Between 37% and 59% of employees directly  
11 experience health-endangering workplace bullying, abuse,  
12 and harassment, and this mistreatment is approximately 4  
13 times more prevalent than sexual harassment alone;

14 (3) Workplace bullying, mobbing, and harassment can  
15 inflict serious harm upon targeted employees, including  
16 feelings of shame and humiliation, severe anxiety,

1 depression, suicidal tendencies, impaired immune systems,  
2 hypertension, increased risk of cardiovascular disease,  
3 and symptoms consistent with post-traumatic stress  
4 disorder;

5 (4) Abusive work environments can have serious  
6 consequences for employers, including reduced employee  
7 productivity and morale, higher turnover and absenteeism  
8 rates, and increases in medical and workers' compensation  
9 claims;

10 (5) If mistreated employees who have been subjected to  
11 abusive treatment at work cannot establish that the  
12 behavior was motivated by race, color, sex, sexual  
13 orientation, national origin, or age, they are unlikely to  
14 be protected by the law against such mistreatment;

15 (6) Legal protection from abusive work environments  
16 should not be limited to behavior grounded in protected  
17 class status as that provided for under employment  
18 discrimination statutes; and

19 (7) Existing workers' compensation plans and  
20 common-law tort actions are inadequate to discourage this  
21 behavior or to provide adequate relief to employees who  
22 have been harmed by abusive work environments.

23 (b) Purpose. It is the purpose of this Act:

24 (1) To provide legal relief for employees who have been  
25 harmed, psychologically, physically, or economically, by  
26 being deliberately subjected to abusive work environments;

1 and

2 (2) To provide legal incentive for employers to prevent  
3 and respond to abusive mistreatment of employees at work.

4 Section 10. Definitions. As used in this Act:

5 (a) Abusive work environment. An abusive work environment  
6 exists when the defendant, acting with malice, subjects an  
7 employee to abusive conduct so severe that it causes tangible  
8 harm to the employee.

9 (1) Abusive conduct. Abusive conduct is conduct,  
10 including acts, omissions, or both, that a reasonable  
11 person would find hostile, based on the severity, nature,  
12 and frequency of the defendant's conduct. Abusive conduct  
13 may include, but is not limited to: repeated infliction of  
14 verbal abuse such as the use of derogatory remarks,  
15 insults, and epithets; verbal or physical conduct of a  
16 threatening, intimidating, or humiliating nature; the  
17 sabotage or undermining of an employee's work performance;  
18 or attempts to exploit an employee's known psychological or  
19 physical vulnerability. A single act normally will not  
20 constitute abusive conduct, but an especially severe and  
21 egregious act may meet this standard.

22 (2) Malice. Malice is defined as the desire to cause  
23 pain, injury, or distress to another.

24 (b) Tangible harm. Tangible harm is defined as  
25 psychological harm or physical harm.

1           (1) Psychological harm. Psychological harm is the  
2 material impairment of a person's mental health, as  
3 established by competent evidence.

4           (2) Physical harm. Physical harm is the material  
5 impairment of a person's physical health or bodily  
6 integrity, as established by competent evidence.

7           (c) Adverse employment action. An adverse employment  
8 action includes, but is not limited to, a termination,  
9 demotion, unfavorable reassignment, failure to promote,  
10 disciplinary action, or reduction in compensation.

11           (d) Constructive discharge. A constructive discharge shall  
12 be considered a termination, and, therefore, an adverse  
13 employment action within the meaning of this Act. A  
14 constructive discharge exists where: (1) the employee  
15 reasonably believed he or she was subjected to abusive conduct;  
16 (2) the employee resigned because of that abusive conduct; and  
17 (3) prior to resigning, the employee brought to the employer's  
18 attention the existence of the abusive conduct and the employer  
19 failed to take reasonable steps to correct the situation.

20           (e) Employer. "Employer" includes the State or any  
21 subdivision thereof, any county, municipality, unit of local  
22 government, school district, community college district,  
23 municipal or public corporation, or State university.

24           Section 15. Unlawful employment practices.

25           (a) Abusive Work Environment. It shall be an unlawful

1 employment practice under this Act to subject an employee to an  
2 abusive work environment as defined by this Act.

3 (b) Retaliation. It shall be an unlawful employment  
4 practice under this Act to retaliate in any manner against an  
5 employee who has opposed any unlawful employment practice under  
6 this Act, or who has made a charge, testified, assisted, or  
7 participated in any manner in an investigation or proceeding  
8 under this Act, including, but not limited to, internal  
9 complaints and proceedings, arbitration and mediation  
10 proceedings, and legal actions.

11 Section 20. Employer liability and defense.

12 (a) An employer shall be vicariously liable for an unlawful  
13 employment practice, as defined by this Act, committed by its  
14 employee.

15 (b) Where the alleged unlawful employment practice does not  
16 include an adverse employment action, it shall be an  
17 affirmative defense for an employer only that:

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

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

23 Section 25. Employee liability and defense.

24 (a) An employee may be individually liable for an unlawful

1 employment practice as defined by this Act.

2 (b) It shall be an affirmative defense for an employee only  
3 that the employee committed an unlawful employment practice as  
4 defined in this Act at the direction of the employer, under  
5 threat of an adverse employment action.

6 Section 30. Affirmative defenses. It shall be an  
7 affirmative defense that:

8 (a) The complaint is based on an adverse employment action  
9 reasonably made for poor performance, misconduct, or economic  
10 necessity;

11 (b) The complaint is based on a reasonable performance  
12 evaluation; or

13 (c) The complaint is based on a defendant's reasonable  
14 investigation about potentially illegal or unethical activity.

15 Section 35. Relief.

16 (a) Relief generally. Where a defendant has been found to  
17 have committed an unlawful employment practice under this Act,  
18 the court may enjoin the defendant from engaging in the  
19 unlawful employment practice and may order any other relief  
20 that is deemed appropriate, including, but not limited to,  
21 reinstatement, removal of the offending party from the  
22 complainant's work environment, back pay, front pay, medical  
23 expenses, compensation for emotional distress, punitive  
24 damages, and attorney's fees.

1           (b) Employer liability. Where an employer has been found to  
2 have committed an unlawful employment practice under this Act  
3 that did not culminate in an adverse employment action, its  
4 liability for damages for emotional distress shall not exceed  
5 \$25,000, and it shall not be subject to punitive damages. This  
6 provision does not apply to individually named employee  
7 defendants.

8           Section 40. Procedures.

9           (a) Private right of action. This Act shall be enforced  
10 solely by a private right of action.

11           (b) Time limitations. An action under this Act must be  
12 commenced no later than one year after the last act that  
13 constitutes the alleged unlawful employment practice.

14           Section 45. Effect on other legal relationships. The  
15 remedies provided for in this Act shall be in addition to any  
16 remedies provided under any other law, and nothing in this Act  
17 shall relieve any person from any liability, duty, penalty or  
18 punishment provided by any other law, except that if an  
19 employee receives workers' compensation for medical costs for  
20 the same injury or illness pursuant to both this Act and the  
21 Workers' Compensation Act, or compensation under both this Act  
22 and that Act in cash payments for the same period of time not  
23 working as a result of the compensable injury or illness or the  
24 unlawful employment practice, the payments of workers'

1 compensation shall be reimbursed from compensation paid under  
2 this Act.".