

1 SB195
2 164011-1
3 By Senator Smitherman
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 10-MAR-15

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8 SYNOPSIS: Under existing law, there is no specific
9 statute that prohibits harassment, intimidation, or
10 bullying in the workplace.

11 This bill would make harassment,
12 intimidation, or bullying in the workplace an
13 unfair labor practice.

14 This bill would define harassment,
15 intimidation, or bullying.

16 This bill would provide a cause of action
17 for an employee against an employer or fellow
18 employee who commits the act of harassment,
19 intimidation, or bullying in the workplace.

20 This bill would require employers to
21 establish and implement a policy to address
22 harassment, intimidation, or bullying in the
23 workplace and to promote harassment and bullying
24 prevention.

25 This bill would also authorize the
26 Commissioner of the Department of Labor to adopt
27 rules to carry out the provisions of this act.

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2 A BILL
3 TO BE ENTITLED
4 AN ACT

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6 Relating to bullying in the workplace; to make
7 harassment, intimidation, or bullying in the workplace an
8 unfair labor practice; to define harassment, intimidation, or
9 bullying; to provide a cause of action for an employee against
10 an employer or fellow employee who commits the act of
11 harassment, intimidation, or bullying in the workplace; to
12 require employers to establish and implement a policy to
13 address harassment, intimidation, or bullying in the workplace
14 and to promote harassment and bullying prevention; and to
15 authorize the Commissioner of the Department of Labor to adopt
16 rules to carry out the provisions of this act.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and may be cited
19 as the Healthy Workplace Act.

20 Section 2. As used in this act, "harassment,
21 intimidation, or bullying" means any act that substantially
22 interferes with an employee's work performance or creates an
23 intimidating, hostile, or offensive work environment and:

24 (1) If the act takes place at the employee's
25 workplace or at any employer-sponsored activity, has the
26 effect of:

1 a. Physically harming an employee or damaging an
2 employee's personal property;

3 b. Knowingly placing an employee in reasonable fear
4 of physical harm to the employee or damage to his or her
5 property;

6 c. Causing emotional distress to the employee; or

7 d. Creating a hostile work environment.

8 (2) If the act takes place outside of the workplace
9 or the employer-sponsored activity is directed specifically at
10 the employee and has the effect of creating a hostile work
11 environment or otherwise creating a substantial disruption to
12 the workplace environment.

13 Section 3. (a) It is an unlawful employment practice
14 for:

15 (1) Any employer or employee to subject another
16 employee to harassment, intimidation, or bullying; or

17 (2) Any employer or employee to retaliate in any
18 manner against an employee who has opposed any employment
19 practice under this act, or who has made a charge, testified,
20 assisted, or participated in any manner in an investigation or
21 proceeding under this act, including, but not limited to,
22 internal complaints and proceedings, arbitration or mediation
23 proceedings, or legal actions.

24 (b) It shall be a defense to an act described in
25 subsection (a):

1 (1) For an employer, if the employer exercised
2 reasonable care to prevent and promptly correct the unlawful
3 employment practice;

4 (2) For an employee, if the employee:

5 a. Unreasonably failed to take advantage of
6 appropriate preventive or corrective opportunities provided by
7 the employer; or

8 b. Acted at the direction of his or her employer
9 under actual or implied threat of an adverse employment
10 action.

11 (c) An employee injured by an act described in
12 subsection (a) shall have a civil action in circuit court or
13 district court. An action under this section must be commenced
14 no later than one year after the last act that constituted the
15 alleged violation occurred.

16 (d) When an employer or employee is found, by a
17 court of competent jurisdiction, to be in violation of
18 subsection (a), the court may enjoin the employer or employee
19 from engaging in the unlawful employment practice and may
20 order any other relief necessary, including, but not limited
21 to, the removal of the offending party from the work
22 environment, medical expenses, compensation for pain and
23 suffering, compensation for emotional distress, punitive
24 damages, and attorneys' fees.

25 Section 4. (a) Nothing in this act is intended to
26 supersede the rights and obligations provided under the
27 National Labor Relations Act, 29 U.S.C. Sections 151 to 169,

1 as amended, any collective bargaining agreement, or any
2 applicable federal or state labor law.

3 (b) Nothing in this act shall be deemed to exempt or
4 relieve any person from any liability, duty, penalty, or
5 punishment provided by any other state law.

6 Section 5. (a) If an employer knowingly, willfully,
7 or intentionally causes a medical or wage loss claim to be
8 paid under health insurance or accident insurance, or fails to
9 provide reasonable and necessary medical treatment, including
10 a failure to reimburse when the employer knew that the claim
11 arose out of a compensable work-related injury and should have
12 been submitted under its workers' compensation insurance
13 coverage, then a civil penalty of five hundred dollars (\$500)
14 shall be assessed against the employer, and the employer may
15 not offset any sickness or accident income benefit paid to the
16 employee against its temporary total disability benefit
17 payment liability due to the employee pursuant to this
18 section. The Commissioner of Labor has the authority to assess
19 and collect the civil penalty.

20 (b) This section shall not be construed to limit any
21 individual's right to pursue any additional civil remedy
22 otherwise allowed by law.

23 Section 6. (a) Not later than January 1, 2016, each
24 employer, in consultation with the Department of Labor, shall
25 adopt a policy prohibiting harassment, intimidation, or
26 bullying. The policy shall include all of the following:

1 (1) A statement prohibiting harassment,
2 intimidation, and bullying.

3 (2) A description of harassment, intimidation, and
4 bullying.

5 (3) A description of the type of behavior expected
6 from each employee.

7 (4) A statement of the consequences and appropriate
8 remedial action for any employee who commits an act of
9 harassment, intimidation, or bullying.

10 (5) A procedure for reporting an act of harassment,
11 intimidation, or bullying, including a provision that allows
12 an individual to anonymously report an act of harassment,
13 intimidation, or bullying; provided this section shall not
14 permit formal disciplinary action based solely on an anonymous
15 report.

16 (6) A procedure for the prompt investigation of a
17 reported act of harassment, intimidation, or bullying.

18 (7) A statement of the manner in which an employer
19 shall respond after an act of harassment, intimidation, or
20 bullying is reported, investigated, and confirmed.

21 (8) A statement prohibiting retaliation against any
22 individual who reports an act of harassment, intimidation, or
23 bullying and specifying the consequences and appropriate
24 remedial action of an individual who engages in such
25 retaliation.

26 (9) A statement of the consequences and appropriate
27 remedial action for a person found to have intentionally

1 falsely accused another of having committed an act of
2 harassment, intimidation, or bullying.

3 (10) A statement of how the policy is to be
4 publicized within the workplace, including a notice that the
5 policy applies to behavior at employer- or work-sponsored
6 activities.

7 (11) The identification by job title of work
8 officials responsible for ensuring that the policy is
9 implemented.

10 (b) No later than January 1, 2016, each employer
11 shall provide all employees with a copy of the policy along
12 with information on the policy's implementation, bullying
13 prevention, and strategies to address bullying and harassment
14 at the workplace.

15 (c) In addition, each employer shall provide
16 training to employees regarding the policy and appropriate
17 procedures relative to implementation of the policy. The
18 Department of Labor shall provide guidelines for the training
19 and provide recommendation of appropriate, available, and free
20 bullying and harassment prevention resources.

21 Section 7. The Commissioner of Labor is authorized
22 to adopt rules to effectuate the purposes of this act.

23 Section 8. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.