

Countering 8 Objections to the Healthy Workplace Bill

1. Workplace bullying sounds childlike. Keep kindergarten out of the worksite.

The term does not appear in the text of the bill. Instead, lawsuits will require demonstrably health-harming abusive conduct be shown that was followed by the employer's decision to punish the plaintiff with negative employment actions. Nothing infantile about abuse.

2. Bullying is too subjective. It cannot be defined.

So is sexual harassment, though illustrations can be given. But the perception's of the allegedly harassed recipient must be treated as credible until shown to be otherwise. This bill reflects the same subjectivity contained in civil rights statutes. By adding significant evidentiary burdens for the plaintiff, such as malice, proof of health harm, and a demonstrated pattern of repeated misconduct, the definition of abusive conduct approaches a more objective standard than long-standing harassment laws.

3. Current laws are adequate. No new law is needed.

Discrimination cases require that plaintiffs have protected status, but defendants with protected status or who act as "equal opportunity abusers" (by offending others who do not have protected status) escape liability. The same limits pertain to hostile work environment claims. When perpetrators and victims are same gender or same race pairs, laws are inapplicable. The tort of intentional infliction of emotional distress should cover misconduct addressed in the HWB, but the American legal standard for "outrageousness" (beyond the bounds of civilized society) is virtually unattainable in U.S. courts. Rarely is what employers do considered outrageous. The HWB plugs gaps in discrimination law and provides a more reasonable standard of unacceptability than IIED.

4. This law is bad for business. It will send employers out of state. It is too expensive.

Good employers will escape vicarious liability by taking measures to prevent and correct (policies & enforcement] abusive conduct. Implementation expenses will be minimal. Supplementing the company's anti-discrimination procedures (mandated by federal and state laws), is the simple solution. Employers are veterans at instituting safeguards against status-based discriminatory misconduct. Employers who derive value from the type of workforce in your state, they will stay, regardless of a law like this with so little fiscal impact on them.

5. HWB handcuffs employers, imposes restraints, curbs employer freedom to innovate.

Ample protections for the non-abusive exercise of routine managerial practices – disciplining poor performers, dismissing workers committing unethical or illegal acts, layoffs due to economic necessity, assigning work – all preserve employer rights in the legislation. If an employer, however, needs to abuse employees to be successful, it's a business model doomed to fail in the long run. If innovation is central to the enterprise, then employee creativity is paramount. A fear-plagued environment is the antithesis of problem solving, inventive, accurate, safe and quality work.

6. Employees are sue crazy. They will file "frivolous" complaints with this law.

Most court cases are business-to-business. The HWB contains several hurdles to preclude frivolous baseless complaints. (1) The private right of action forces plaintiff to identify and pay out-of-pocket fees to proceed. (2) Malice raises the standard. (3) Multiple affirmative defenses for employers undermine cases lacking evidence. (4) Proof of harm is unique and raises the bar.

7. Our State is broke. We can't afford any fiscal impact.

Understood. The HWB requires no state involvement. No agency will be required to collect complaints, to investigate and render decisions, or to enforce any provisions of the bill. The courts will decide based on evidence provided by opposing counsel. State agencies have no right to say that complaints against them are inevitable because the State, as employer, can prevent liability by taking proactive steps to prevent and correct abusive conduct.

8. Other countries don't care about this.

Actually, the U.S. is alone in the western industrialized world to not address this phenomenon. Extensive research shows how adversely it affects employee health by causing many stress-related diseases. Canadian provinces have enacted laws since 2004, the latest in July 2012 (Quebec, Saskatchewan, Federal Govt, Ontario, Manitoba & British Columbia), nearly all European countries have related laws. Britain, where the phrase "workplace bullying" was coined, uses criminal stalking laws to curb bullying. Australia passed a criminal anti-bullying law in one state and is considering nationalizing it. This HWB has been introduced in 21 states since 2003. Is our state brave enough to be the first to enact a law?

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