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House of Representatives, March 26, 2013

An Act To Protect Employees from Abusive Work Environments

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative GIDEON of Freeport.
Cosponsored by Senator JACKSON of Aroostook and
Representatives: CASSIDY of Lubec, ESPLING of New Gloucester, LONGSTAFF of
Waterville, LUCHINI of Ellsworth, SCHNECK of Bangor, TIPPING-SPITZ of Orono,
Senator: GERZOFSKY of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA c. 7, sub-c. 11** is enacted to read:

3 **SUBCHAPTER 11**

4 **PROTECTION FROM ABUSIVE WORK ENVIRONMENTS**

5 **§876. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 **1. Abusive conduct.** "Abusive conduct" means acts or omissions or both that a
9 reasonable person would find abusive, based on their severity, nature or frequency.
10 "Abusive conduct" includes, but is not limited to: repeated verbal abuse involving the use
11 of derogatory remarks, insults and epithets; verbal, nonverbal or physical conduct of a
12 threatening, intimidating or humiliating nature; and the sabotaging or undermining of an
13 employee's work performance. A single act or omission does not constitute abusive
14 conduct, unless so severe and egregious that a reasonable person would find it abusive.

15 **2. Abusive work environment.** "Abusive work environment" means a work
16 environment in which an employer or one or more of its employees, acting with intent to
17 cause pain or distress to an employee, subjects that employee to abusive conduct that
18 causes physical harm, psychological harm or both.

19 **3. Adverse employment action.** "Adverse employment action" means a
20 termination, constructive discharge, demotion, unfavorable reassignment, failure to
21 promote, disciplinary action, reduction in compensation or other action adverse to an
22 employee's employment status.

23 **4. Constructive discharge.** "Constructive discharge" means a termination of
24 employment by resignation under the following circumstances:

25 A. The employee reasonably believed that the employee was subjected to an abusive
26 work environment;

27 B. The employee resigned because of that abusive work environment; and

28 C. The employer was aware of the abusive conduct prior to the resignation and failed
29 to stop it.

30 **5. Physical harm.** "Physical harm" means the impairment of a person's physical
31 health or bodily integrity, as established by competent evidence.

32 **6. Psychological harm.** "Psychological harm" means the impairment of a person's
33 mental health, as established by competent evidence.

1 **§877. Unlawful employment practices**

2 **1. Abusive work environment.** A person may not subject an employee to an
3 abusive work environment.

4 **2. Retaliation.** A person may not retaliate in any manner against an employee who
5 has taken reasonable action to stop or contest a violation of subsection 1 or who has made
6 a charge, testified, assisted or participated in any manner in an investigation or
7 proceeding under this subchapter, including, but not limited to, internal complaints and
8 proceedings, arbitration and mediation proceedings and legal actions.

9 **§878. Employer liability and defense**

10 **1. Employer liability.** An employer may be individually liable for direct actions in
11 violation of section 877 and is vicariously liable for a violation of section 877 by an
12 employee of that employer.

13 **2. Employer defense.** If an alleged violation of section 877 does not result in an
14 adverse employment action, it is an affirmative defense to liability under subsection 1 if
15 the employer:

16 **A.** Exercised reasonable care to prevent and promptly correct any abusive conduct or
17 abusive work environment; and

18 **B.** The complainant employee unreasonably failed to take advantage of appropriate
19 preventive or corrective opportunities provided by the employer.

20 **§879. Employee liability and defense**

21 **1. Employee liability.** An employee may be individually liable for a violation of
22 section 877.

23 **2. Employee defense.** It is an affirmative defense for an employee if the employee
24 violated section 877 at the direction of the employer under actual or implied threat of an
25 adverse employment action.

26 **§880. Affirmative defenses**

27 **1. Affirmative defenses.** It is an affirmative defense to any action brought under
28 this subchapter that:

29 **A.** The complaint is based on an adverse employment action reasonably made for
30 poor performance, misconduct or economic necessity;

31 **B.** The complaint is based on a reasonable performance evaluation; or

32 **C.** The complaint is based on an employer's reasonable investigation about
33 potentially illegal or unethical activity.

34 **§880-A. Relief**

35 **1. Relief generally.** If a person is found liable for a violation of this subchapter, the
36 court may enjoin the defendant from engaging in any activity related to the violation and

1 may order any other relief the court determines is appropriate, including, but not limited
2 to, reinstatement of employment, removal of the offending party from the complainant's
3 work environment, back pay, front pay, medical expenses, compensation for pain and
4 suffering, compensation for emotional distress, punitive damages and attorney's fees.

5 **2. Limitations on employer liability.** When an employer is liable for a violation of
6 this subchapter that did not include an adverse employment action, emotional distress
7 damages and punitive damages may be awarded only if the court finds the actionable
8 conduct was extreme. This limitation does not apply to individually named employee
9 defendants.

10 **3. Aggravating factor.** In any action brought under this subchapter, the court shall
11 consider it to be an aggravating factor that the conduct constituting a violation of this
12 subchapter exploited an employee's known psychological or physical illness or disability.

13 **§880-B. Procedures**

14 **1. Private right of action.** This subchapter may be enforced solely by a private
15 right of action.

16 **2. Time limitations.** An action under this subchapter must be commenced no later
17 than one year after the last act that constitutes a violation of this subchapter.

18 **§880-C. Effect on other legal relationships**

19 **1. Collective bargaining.** This subchapter does not supersede rights and obligations
20 provided under collective bargaining laws, rules and regulations.

21 **2. Nonlimitation of remedy.** The remedies provided in this subchapter are in
22 addition to any remedies provided under any other law, and nothing in this subchapter
23 relieves any person from any liability, duty, penalty or punishment provided by any other
24 law, except as provided by subsection 3.

25 **3. Workers' compensation.** If an employee receives workers' compensation
26 benefits for medical costs for the same physical harm or psychological harm pursuant to
27 both this subchapter and Title 39-A or compensation under both this subchapter and Title
28 39-A in cash payments for the same period of time of the employee's not working as a
29 result of the compensable physical harm or psychological harm resulting from a violation
30 of this subchapter, the court must order the payments of workers' compensation benefits
31 to be reimbursed from compensation paid under this subchapter.

32 **SUMMARY**

33 This bill provides legal relief for employees who have been harmed psychologically,
34 physically or economically by exposure to abusive work environments. Employees and
35 employers who subject an employee to an abusive work environment are liable, and
36 employers are vicariously liable for the abusive workplace conduct of their employees, in
37 a private civil action brought by the affected employee. The legal remedies made
38 available by this bill do not limit any other legal rights of an individual, except that

1 workers' compensation benefits received under the Maine Revised Statutes, Title 39-A for
2 the same injury or illness must be reimbursed from compensation that is earned through
3 the legal remedies made available by this bill.