

HOUSE BILL No. 5713

December 17, 2009, Introduced by Reps. Gonzales, Spade, Polidori, Tlaib, Constan and Valentine and referred to the Committee on Labor.

A bill to prevent abusive conduct in the workplace; to require employers to adopt a policy against an abusive workplace environment; to provide a cause of action for employees who are the subject of abusive conduct; to provide remedies; to provide affirmative defenses; and to prohibit retaliation.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "abusive workplace prevention act".

3 Sec. 2. As used in this act:

4 (a) "Abusive conduct" means acts or omissions that a
5 reasonable person would find hostile, based on the severity,
6 nature, and frequency of the conduct, and includes, but is not
7 limited to, any the following:

1 (i) Repeated use of derogatory remarks, insults, or epithets.

2 (ii) Threatening, intimidating, or humiliating written or oral
3 communications, including electronic communications, or physical
4 conduct.

5 (iii) Sabotaging or undermining an employee's work performance.

6 (iv) Exploiting an employee's known psychological or physical
7 vulnerability.

8 (v) An especially severe or egregious single instance of any
9 of the behavior described in subparagraphs (i) to (iv).

10 (b) "Abusive work environment" means a work environment in
11 which an individual, acting with malice, subjects an employee to
12 abusive conduct severe enough to cause tangible harm to the
13 employee.

14 (c) "Adverse employment action" includes, but is not limited
15 to, constructive discharge, termination, demotion, unfavorable
16 reassignment, failure to promote, disciplinary action, or reduction
17 in compensation.

18 (d) "Constructive discharge" means the termination of
19 employment by resignation, if all of the following conditions are
20 present:

21 (i) The employee reasonably believes that he or she was
22 subjected to abusive conduct.

23 (ii) The employee resigned because of the abusive conduct.

24 (iii) Before resigning, the employee brought the abusive conduct
25 to the employer's attention and the employer failed to take
26 reasonable steps to correct the situation.

27 (e) "Employer" means an entity with 100 or more employees at

1 any time during the calendar year.

2 (f) "Malice" means the desire to cause pain, injury, or
3 distress to another.

4 (g) "Tangible harm" means material impairment of an
5 individual's physical health, mental health, or bodily integrity,
6 as established by competent evidence.

7 Sec. 3. An employer shall adopt and implement an abusive
8 workplace environment policy that includes procedures for
9 reporting, investigating, and remedying abusive conduct. The policy
10 shall include an impartial review board to evaluate employee claims
11 of abusive conduct and recommend remedies. The policy may include
12 preventive measures such as education and training.

13 Sec. 4. (1) An employee may bring a civil action against an
14 employer for damages or reinstatement, or both, if an adverse
15 employment action results from an abusive work environment.

16 (2) Any of the following is an affirmative defense to an
17 action under subsection (1):

18 (a) The employer adopted and enforced a policy required under
19 section 3, the employee did not bring a complaint of abusive
20 conduct to the employer's attention, and the employer had no other
21 reason to know of the abusive conduct.

22 (b) The employer responded reasonably and promptly to the
23 employee's report of abusive conduct.

24 (c) The adverse employment action was based on job
25 performance, misconduct, or economic necessity unrelated to abusive
26 conduct in the workplace.

27 (3) An action under this section shall be brought within 1

1 year of the adverse employment action.

2 Sec. 5. A person shall not retaliate or discriminate against
3 an individual because the individual has filed a complaint or
4 testified, assisted, or participated in an investigation,
5 proceeding, or civil action under this act.

6 Sec. 6. A civil action under this act is in addition to any
7 remedy provided in any other law. This act does not relieve any
8 person from any other liability, duty, penalty, or sanction
9 provided under any other law.