

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2857

By Delegates Hansen and Williams

[Introduced February 24, 2025; referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
2 designated §21-3F-1, §21-3F-2, §21-3F-3, §21-3F-4, §21-3F-5, §21-3F-6, §21-3F-7, and
3 §21-3F-8, relating to creating the Workplace Bullying Accountability Act; definitions;
4 safeguarding the workplace; employer's duty not to retaliate; employee remedies; and
5 preservation of rights.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3F. THE WORKPLACE BULLYING ACCOUNTABILITY ACT.

§21-3F-1. Findings

1 The Legislature finds that:

2 (1) The social and economic well-being of the state is dependent upon healthy and
3 productive employees;

4 (2) Approximately one-third of all employees will directly experience health-endangering
5 workplace bullying during their working lives;

6 (3) Workplace bullying can negatively affect an employee's mental and physical health and
7 inflict serious harm, including, among other things, feelings of shame and humiliation, severe
8 anxiety, depression, suicidal ideation, impaired immune systems, hypertension, increased risk of
9 cardiovascular disease, and post-traumatic stress disorder;

10 (4) Workplace bullying can have serious consequences for employers, including reduced
11 employee productivity and morale, greater levels of fear and distrust, higher turnover and
12 absenteeism rates, and increased demands on employee benefit programs, including health care
13 coverage;

14 (5) If employees who have been subjected to workplace bullying cannot establish that the
15 behavior was motivated by protected class membership status such as race, color, sex, sexual
16 orientation, national origin, disability, or age, or retaliation for engaging in protected
17 whistleblowing, then they are unlikely to enjoy legal protection against such abuse;

(6) Legal protection from abusive work environments should not be limited to behavior grounded in protected class status; and

(7) Existing workers' compensation plans, occupational safety and health laws, and common-law tort actions are inadequate to discourage workplace bullying or to provide relief to employees who have been harmed by workplace bullying.

§21-3F-2. **Purpose.**

The Legislature states the purpose of this article is to:

(1) Create an enforceable duty of care for employers to engage in reasonable preventive and responsive actions to safeguard employees from workplace bullying; and

(2) Abstain from retaliating against employees who act pursuant to their contractual rights under this article.

§21-3F-3. **Definitions.**

As used in this article:

"Abusive work environment" means acts, omissions, or both, that a reasonable person would find constitutes an abusive work environment, based on the severity, nature, and frequency of the conduct, including, but not limited to: repeated verbal abuse such as targeted derogatory remarks, insults, epithets, or ridicule; verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature; defamatory statements that undermine an employee's vocational and personal reputation; the sabotage or deliberate undermining of an employee's work performance; and orchestrated patterns of ostracism.

A single act normally shall not constitute an abusive work environment, but an especially severe and egregious act may meet this standard.

Pertinent online communications and off-site conduct between employees shall be included in determining whether an abusive work environment exists.

Conduct that exploits an employee's known psychological or physical illness or disability shall be considered an aggravating factor in determining whether an abusive work environment

15 exists.

16 An adverse employment action and associated behaviors defined in this section shall be
17 considered an aggravating factor in determining whether an abusive work environment exists.

18 "Adverse employment action" means an outcome that negatively impacts an employee,
19 including but not limited to, termination, constructive discharge, suspension, or reduction in
20 compensation.

21 "Constructive discharge" means an adverse employment action where: (1) the employee
22 reasonably believed they were subjected to workplace bullying; (2) the employee resigned
23 because of that mistreatment; and (3) the employer was aware of the workplace bullying prior to the
24 resignation and failed to stop it.

25 "Psychological harm" means the impairment of a person's mental health, as established
26 by competent evidence.

27 "Physical harm" means the impairment of a person's physical health or bodily integrity,
28 as established by competent evidence.

29 "Retaliation" means retaliatory acts or omissions, by way of an adverse employment action
30 or other material response that would dissuade a reasonable person from exercising their rights
31 under this article, directed at an employee because they opposed any employment practice under
32 this article, or made a charge, testified, assisted, or participated in any manner in an investigation
33 or proceeding under this article.

34 "Workplace bullying" means when an employer or one or more its employees subjects an
35 employee to an abusive work environment that causes physical harm, psychological harm, or both.

§21-3F-4. Duty to safeguard from workplace bullying.

1 (a) An employer has a duty of care to safeguard each of its employees from workplace
2 bullying.

3 **(b) An employer fulfills its duty of care under this section by engaging in reasonable**
4 **preventive and responsive measures concerning workplace bullying. Reasonable preventive**
5 **measures include:**

6 **(1) Establishing policies and procedures for preventing, reporting, and responding to**
7 **workplace bullying;**

8 **(2) Disseminating to all employees a policy that includes, at minimum, a definition of**
9 **workplace bullying consistent with this article, notification of the contractual rights conferred by this**
10 **article, and procedures for reporting workplace bullying; and**

11 **(3) On an annual basis, conducting employee training and education about workplace**
12 **bullying.**

13 **(c) Reasonable responsive measures include:**

14 **(1) Conducting good faith investigations in response to reports and claims of**
15 **workplace bullying;**

16 **(2) Complying with the employer's own policies and procedures concerning workplace**
17 **bullying;**

18 **(3) Offering remedial measures to an employee subjected to workplace bullying, which may**
19 **include, but are not limited to, stopping the bullying behaviors, implementing reasonable preventive**
20 **measures, removing responsible parties from the employee's work environment, and providing**
21 **reasonably foreseeable relief including medical care, mental health care, lost wages and benefits,**
22 **and restoration or reinstatement for an adverse employment action as defined in this article; and**

23 **(4) Instituting remedial measures, personnel actions, and discipline for those engaging in**
24 **workplace bullying, which may include, but are not limited to, coaching, counseling, removal of**
25 **supervisory duties, pay reduction, transfer, suspension, demotion, and/or termination.**

26 **(d) It is not a violation of the duty of care when an allegation of workplace bullying is**
27 **based on:**

(1) An adverse employment action reasonably made for poor performance, misconduct, or business necessity;

(2) A reasonable performance evaluation; or

(3) An employer's reasonable investigation about potentially illegal or unethical activity.

(e) An employee may bring an action in court for an employer's failure to meet its duty of care.

§21-3F-5. Duty not to retaliate.

(a) An employer has a duty of care not to retaliate against an employee who has opposed any employment practice under this article, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this article, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings, and legal actions.

(b) When retaliation has occurred, an employer may attempt to mitigate its violation of duty of care by offering remedial measures to the employee, including, but not limited to, stopping the retaliatory behaviors, implementing reasonable preventive measures, removing responsible parties from an employee's work environment, and providing reasonably foreseeable relief including medical care, mental health care, lost wages and benefits, and restoration or reinstatement for an adverse employment action.

(c) When retaliation has occurred, an employer may attempt to mitigate its violation of duty of care by requiring appropriate remedial measures, personnel actions, and discipline for those engaging in retaliation, including, but not limited to, coaching, counseling, removal of supervisory duties, pay reduction, transfer, suspension, demotion, or termination.

(d) An employee may bring an action in Circuit Court for an employer's failure to meet its duty of care.

§21-3F-6. Remedies.

(a) When an employer is found to have failed to meet its duty of care, the court may enjoin

the defendant from engaging in further workplace bullying and order other relief including, as appropriate, requiring that the employer to comply with its duty of care; and awarding relief consistent with remedial measures defined in this article, as well as attorney's fees.

(b) When an employer is found to have failed to meet its duty of care, the court may enjoin the defendant from engaging in further retaliation and order other relief including, as appropriate, requiring that the employer comply with its duty of care; and awarding relief consistent with remedial measures defined in this article, as well as attorney's fees.

(c) Where an employer is found to have failed to meet its duty of care and attempts to mitigate its failure, the employee has a duty to reasonably consider the employer's offer to mitigate said breach. Reasonableness shall be determined by the severity of the breach (including the impact of the breach on the employee's physical and mental health) and the corresponding timing and remedial sufficiency of the employer's offer. It further shall be a rebuttable presumption that an employee is acting reasonably by refusing to work under the supervision of any co-employee who engaged in the behaviors violative of this article.

§21-3F-7. Time limitations.

An action under this article must be commenced no later than one year after the last act that constitutes the alleged violation of §21-3F-4 or §21-3F- 5 of this code.

§21-3F-8. Preservation of rights.

Nothing in this article may supersede rights and obligations provided under other federal, state, and local laws, including, but not limited to those addressing employment discrimination, occupational safety and health, workers' compensation, and collective bargaining.

NOTE: The purpose of this bill is to create The Workplace Bullying Accountability Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.