

ABUSIVE WORKPLACE POLICIES ACT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Labor Code to require policies prohibiting certain workplace practices by public employers.

Highlighted Provisions:

This bill:

- ▶ enacts the Abusive Workplace Policies Act, including:
 - defining terms;
 - requiring a policy against certain conduct;
 - imposing requirements for a policy;
 - allowing for affirmative defenses; and
 - providing for civil enforcement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

- 34A-12-101**, Utah Code Annotated 1953
- 34A-12-102**, Utah Code Annotated 1953
- 34A-12-103**, Utah Code Annotated 1953



- 28 **34A-12-201**, Utah Code Annotated 1953
- 29 **34A-12-202**, Utah Code Annotated 1953
- 30 **34A-12-203**, Utah Code Annotated 1953
- 31 **34A-12-301**, Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **34A-12-101** is enacted to read:

35 **CHAPTER 12. ABUSIVE WORKPLACE POLICIES ACT**

36 **Part 1. General Provisions**

37 **34A-12-101. Title.**

38 This chapter is known as the "Abusive Workplace Policies Act."

39 Section 2. Section **34A-12-102** is enacted to read:

40 **34A-12-102. Definitions.**

41 As used in this chapter:

42 (1) (a) "Abusive conduct" means conduct that a reasonable person would find hostile
43 on the basis of the severity, nature, and frequency of the conduct.

44 (b) "Abusive conduct" includes:

45 (i) repeated infliction of verbal abuse, such as the use of derogatory remarks, insults,
46 and epithets;

47 (ii) verbal or physical conduct of a threatening, intimidating, or humiliating nature;

48 (iii) the sabotage or undermining of an employee's work performance; or

49 (iv) an attempt to exploit an employee's known psychological or physical vulnerability.

50 (2) "Abusive workplace" means a workplace in which a person acts with malice to
51 subject an employee to abusive conduct so severe that it causes tangible harm to the employee.

52 (3) "Adverse employment action" includes:

53 (a) a termination;

54 (b) a constructive discharge;

55 (c) a demotion;

56 (d) an unfavorable reassignment;

57 (e) a failure to promote;

58 (f) a disciplinary action; or

- 59 (g) a reduction in compensation.
- 60 (4) "Conduct" includes an act, a failure to act, or both.
- 61 (5) "Constructive discharge" means that:
- 62 (a) an employee reasonably believes that the employee is subject to abusive conduct;
- 63 (b) the employee resigns because of that abusive conduct;
- 64 (c) before resigning, the employee informs the employer of the abusive conduct; and
- 65 (d) the employer fails to take reasonable steps to correct the situation.
- 66 (6) "Employee" means an individual under a contract of hire with an employer.
- 67 (7) (a) "Employer" means:
- 68 (i) a federal, state, or local government agency; or
- 69 (ii) an entity that receives money from a federal, state, or local government agency.
- 70 (b) "Employer" includes an agent of an employer.
- 71 (8) "Malice" means the desire to cause pain, injury, or distress to another.
- 72 (9) "Neutral body" means an entity that has at least a majority of the voting members
- 73 who are not involved in the employment setting at issue.
- 74 (10) "Physical harm" is the material impairment of an individual's physical health or
- 75 bodily integrity, as established by competent evidence.
- 76 (11) "Psychological harm" means a material impairment of an individual's mental
- 77 health, as established by competent evidence.
- 78 (12) "Tangible harm" means:
- 79 (a) physical harm; or
- 80 (b) psychological harm.

81 Section 3. Section **34A-12-103** is enacted to read:

82 **34A-12-103. Scope of chapter.**

83 (1) This chapter does not exempt or relieve a person from a liability, duty, or penalty

84 provided by another law of this state.

85 (2) This chapter does not create a remedy for abusive conduct or an abusive workplace.

86 Section 4. Section **34A-12-201** is enacted to read:

87 **Part 2. Policies Against Abusive Workplace**

88 **34A-12-201. Policy against abusive workplace required.**

89 (1) On and after July 1, 2011, an employer shall adopt a policy that provides that:

- 90 (a) a person may not subject an employee to an abusive workplace; and
- 91 (b) a person may not take an adverse employment action in any manner against an
- 92 employee who:
 - 93 (i) opposes conduct that is a violation of Subsection (1)(a);
 - 94 (ii) engages in reasonable conduct to prevent conduct that is illegal or unethical; or
 - 95 (iii) makes a charge, testifies, assists, or participates in an investigation or proceeding
- 96 under this chapter, including:
 - 97 (A) an internal complaint or proceeding;
 - 98 (B) an arbitration or mediation proceeding; or
 - 99 (C) a legal action.

100 (2) A policy required by this section shall comply with Section 34A-12-202.

101 Section 5. Section **34A-12-202** is enacted to read:

102 **34A-12-202. Procedural requirements for policy.**

103 A policy required under Section 34A-12-201 shall:

- 104 (1) provide a procedure for:
 - 105 (a) filing a complaint by an aggrieved employee; and
 - 106 (b) taking action on the basis of a complaint, including designating a neutral body to
 - 107 take action on a complaint;

108 (2) expressly authorize that, in examining whether abusive conduct exists, a neutral

109 body may weigh the severity, nature, and frequency of the conduct, including an inference of

110 malice if one or more of the following factors exist:

- 111 (a) an outward expression of hostility;
- 112 (b) harmful conduct inconsistent with an employer's legitimate business interests;
- 113 (c) a continuation of harmful, illegitimate conduct after the aggrieved employee:
 - 114 (i) requests that the conduct cease; or
 - 115 (ii) demonstrates outward signs of emotional or physical distress in the face of the
 - 116 conduct; or

117 (d) attempts to exploit an aggrieved employee's known psychological or physical

118 vulnerability; and

119 (3) provide one or more remedies that address:

- 120 (a) preventing abusive conduct in the future; and

121 (b) remedying a tangible harm to an aggrieved employee.

122 Section 6. Section **34A-12-203** is enacted to read:

123 **34A-12-203. Affirmative defenses allowed.**

124 A policy required by Section 34A-12-201 may provide for one or more affirmative
125 defenses, including providing an affirmative defense if:

126 (1) an employer exercises reasonable care to prevent and promptly correct abusive
127 conduct; and

128 (2) the aggrieved employee unreasonably fails to take advantage of appropriate
129 preventive or corrective opportunities.

130 Section 7. Section **34A-12-301** is enacted to read:

131 **Part 3. Civil Enforcement**

132 **34A-12-301. Private right of action.**

133 (1) A person may enforce this chapter solely by a private right of action.

134 (2) (a) A person may file a civil action in a court of competent jurisdiction to obtain
135 relief under this chapter.

136 (b) A person may not commence an action under this chapter more than one year after
137 the last conduct that constitutes the alleged prohibited workplace practice.

138 (c) A person may not bring a class action under this chapter.

139 (3) If a court finds that an employer fails to have a policy that complies with this
140 chapter, the court may award:

141 (a) \$500;

142 (b) attorney fees; and

143 (c) litigation costs.

Legislative Review Note

as of 2-10-11 11:26 AM

Office of Legislative Research and General Counsel