

HB0196S01 compared with HB0196

~~{deleted text}~~ shows text that was in HB0196 but was deleted in HB0196S01.

inserted text shows text that was not in HB0196 but was inserted into HB0196S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Stephen E. Sandstrom proposes the following substitute bill:

ABUSIVE WORKPLACE POLICIES ACT

2012 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 certain public employers.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

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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

34A-12-201, Utah Code Annotated 1953

~~{ 34A-12-202, Utah Code Annotated 1953~~

~~— 34A-12-203, Utah Code Annotated 1953~~

~~— 34A-12-301, Utah Code Annotated 1953~~

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

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

CHAPTER 12. ABUSIVE WORKPLACE POLICIES ACT

Part 1. General Provisions

34A-12-101. Title.

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

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

34A-12-102. Definitions.

As used in this chapter:

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

(b) "Abusive conduct" includes:

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

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

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

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

(2) "Abusive workplace" means a workplace in which a person acts with malice to

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subject an employee to abusive conduct so severe that it causes tangible harm to the employee.

(3) "Adverse employment action" includes:

- (a) a termination;
- (b) a constructive discharge;
- (c) a demotion;
- (d) an unfavorable reassignment;
- (e) a failure to promote;
- (f) a disciplinary action; or
- (g) a reduction in compensation.

(4) "Conduct" includes an act, a failure to act, or both.

(5) "Constructive discharge" means that:

- (a) an employee reasonably believes that the employee is subject to abusive conduct;
- (b) the employee resigns because of that abusive conduct;
- (c) before resigning, the employee informs the employer of the abusive conduct; and
- (d) the employer fails to take reasonable steps to correct the situation.

(6) "Employee" means an individual under a contract of hire with an employer.

(7) (a) "Employer" means:

- (i) a state agency;
- (ii) an institution of higher education as defined in Section 53B-3-102; or
- (iii) a public authority legally constituted by the state as an administrative agency to

provide control of and direction for public education.

(b) "Employer" includes an agent of an employer.

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

~~{~~ ~~—~~ ~~(9) "Neutral body" means an entity that has at least a majority of the voting members~~
~~who are not involved in the employment setting at issue.~~

~~}~~ ~~(~~10~~;9) "Physical harm" is the material impairment of an individual's physical health~~
~~or bodily integrity, as established by competent evidence.~~

~~(~~11~~;10) "Psychological harm" means a material impairment of an individual's mental~~
~~health, as established by competent evidence.~~

~~(~~12~~;11) "Tangible harm" means:~~

- ~~(a) physical harm; or~~

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(b) psychological harm.

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

34A-12-103. Scope of chapter.

(1) This chapter does not exempt or relieve a person from a liability, duty, or penalty provided by another law of this state.

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

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

Part 2. Policies Against Abusive Workplace

34A-12-201. Policy against abusive workplace required -- Training.

(1) On and after July 1, 2012, an employer shall adopt a policy that provides that:

(a) a person may not subject an employee to an abusive workplace; and

(b) a person may not take an adverse employment action in any manner against an employee who:

(i) opposes conduct that is a violation of Subsection (1)(a);

(ii) engages in reasonable conduct to prevent conduct that is illegal or unethical; or

(iii) makes a charge, testifies, assists, or participates in an investigation or proceeding

under this chapter, including:

(A) an internal complaint or proceeding;

(B) an arbitration or mediation proceeding; or

(C) a legal action.

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

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

~~**34A-12-202. Procedural requirements for policy:**~~

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

~~(1) provide a procedure for:~~

~~(a) filing a complaint by an aggrieved employee; and~~

~~(b) taking action on the basis of a complaint, including designating a neutral body to take action on a complaint;~~

~~(2) expressly authorize that, in examining whether abusive conduct exists, a neutral body may weigh the severity, nature, and frequency of the conduct, including an inference of malice if one or more of the following factors exist:~~

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- ~~_____ (a) an outward expression of hostility;~~
- ~~_____ (b) harmful conduct inconsistent with an employer's legitimate business interests;~~
- ~~_____ (c) a continuation of harmful, illegitimate conduct after the aggrieved employee;~~
- ~~_____ (i) requests that the conduct cease; or~~
- ~~_____ (ii) demonstrates outward signs of emotional or physical distress in the face of the conduct; or~~
- ~~_____ (d) attempts to exploit an aggrieved employee's known psychological or physical vulnerability; and~~
- ~~_____ (3) provide one or more remedies that address:~~
 - ~~_____ (a) preventing abusive conduct in the future; and~~
 - ~~_____ (b) remedying a tangible harm to an aggrieved employee.~~

~~_____ Section 6. Section 34A-12-203 is enacted to read:~~

~~_____ 34A-12-203. Affirmative defenses allowed.~~

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

- ~~_____ (1) an employer exercises reasonable care to prevent and promptly correct abusive conduct; and~~
- ~~_____ (2) the aggrieved employee unreasonably fails to take advantage of appropriate preventive or corrective opportunities.~~

~~_____ Section 7. Section 34A-12-301 is enacted to read:~~

~~_____ Part 3. Civil Enforcement~~

~~_____ 34A-12-301. Private right of action.~~

- ~~_____ (1) An employee may enforce this chapter solely by a private right of action.~~
- ~~_____ (2) (a) An employee may file a civil action in a court of competent jurisdiction to obtain relief under~~The executive director of the Department of Human Resource Management shall include in statewide training provided in accordance with Section 67-19-6 training regarding the requirements of~~this chapter.~~
- ~~{ _____ (b) An employee may not commence an action under this chapter more than one year after the last conduct that constitutes alleged prohibited workplace practice to which a policy would apply.~~
- ~~_____ (3) If a court finds that an employer fails to have a policy that complies with this~~

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[chapter, the court may issue a writ of mandamus to compel compliance.](#)

Legislative Review Note

~~_____ as of 2-2-12 5:06 PM~~

~~_____ Office of Legislative Research and General Counsel}~~