

H.B. 292

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ABUSIVE WORKPLACE POLICIES ACT

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2011 GENERAL SESSION

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STATE OF UTAH

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Chief Sponsor: Stephen E. Sandstrom

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Senate Sponsor: _____

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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

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

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

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

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CHAPTER 12. ABUSIVE WORKPLACE POLICIES ACT

36

Part 1. General Provisions

34A-12-101. Title.

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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:

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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:
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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