

2019 Regular Session

SENATE BILL NO. 139

BY SENATOR GATTI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT. Prohibits workplace bullying and harassment. (8/1/19)

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AN ACT

To enact Part V of Chapter 3 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:295.1 through 295.12, relative to employment standards and conditions; to prohibit workplace bullying and harassment; to provide for a short title; to provide for legislative intent; to provide for definitions; to prohibit abusive conduct; to provide for vicarious liability; to prohibit creating or failing to suppress an abusive work environment; to provide for affirmative defenses; to provide for comparative fault; to prohibit retaliation; to provide for civil actions; to provide for remedies and damages; to provide for a limitation of action; to provide for collective bargaining agreements; to provide for recoupment of workers' compensation payments; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part V of Chapter 3 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:295.1 through 295.12, is hereby enacted to read as follows:

**PART V. PROHIBITION AGAINST WORKPLACE**

**BULLYING AND HARASSMENT**

**§295.1. Short title**

1                   This Part shall be known and may be cited as the "Louisiana Healthy  
2                   Workplace Law".

3                   §295.2 Legislative findings; purposes

4                   A. The legislature finds and declares all of the following:

5                   (1) The social and economic well-being of the state of Louisiana is  
6                   dependent upon healthy and productive employees.

7                   (2) At least one-third of all employees will directly experience  
8                   health-endangering workplace bullying, abuse, and harassment during their  
9                   working lives, and this form of mistreatment may be even more prevalent than  
10                  sexual harassment alone.

11                  (3) Workplace bullying and harassment can inflict serious harm upon  
12                  targeted employees, including feelings of shame and humiliation, severe anxiety,  
13                  depression, suicidal tendencies, impaired immune systems, hypertension,  
14                  increased risk of cardiovascular disease, and symptoms consistent with  
15                  post-traumatic stress disorder.

16                  (4) Abusive work environments can have serious consequences for  
17                  employers, including reduced employee productivity and morale, higher  
18                  turnover and absenteeism rates, and increases in medical and workers'  
19                  compensation claims.

20                  (5) If mistreated employees who have been subjected to abusive  
21                  treatment at work cannot establish that the behavior was motivated by race,  
22                  color, religion, sex, national origin, age, disability, or veteran status, as is  
23                  provided for in Chapter 3-A of Title 23 of the Louisiana Revised Statutes of  
24                  1950, the employees are unlikely to be protected by the law against such  
25                  mistreatment.

26                  (6) Legal protection from abusive work environments should not be  
27                  limited to behavior grounded in protected class status as that provided for  
28                  under employment discrimination statutes.

29                  (7) Existing workers' compensation plans and tort actions are

1 inadequate to discourage this behavior or to provide adequate relief to  
2 employees who have been harmed by abusive work environments.

3 B. It is, therefore, the purpose of this Part to do all of the following:

4 (1) To provide legal relief for employees who have been harmed,  
5 psychologically, physically, or economically, by the deliberate infliction of  
6 abusive conduct in the workplace or mistreatment due to the creation of abusive  
7 work environments.

8 (2) To provide a legal incentive for employers to prevent and  
9 expeditiously respond to abusive mistreatment of employees in the workplace.

10 §295.3. Definitions

11 As used in this Part, the following words and phrases shall have the  
12 following meanings ascribed to them:

13 (1) "Abusive conduct" means the acts or omissions that a reasonable  
14 person would find abusive based on the severity, nature, and frequency of the  
15 conduct, including, but is not limited to, any of the following:

16 (a) Repeated verbal abuse such as the use of derogatory remarks, insults,  
17 and epithets.

18 (b) Verbal, non-verbal, or physical conduct of a threatening,  
19 intimidating, or humiliating nature.

20 (c) Sabotage or the undermining of an employee's work performance.

21 (2) "Abusive work environment", means an employment condition  
22 created when an employer fails to take reasonably appropriate corrective action  
23 to prevent one or more of his employees from acting in a manner that subjects  
24 the complainant employee to harassment or abusive conduct that causes  
25 physical harm or psychological harm.

26 (3) "Adverse employment" action means an outcome which negatively  
27 impacts an employee including, but not limited to, any of the following:

28 (a) Termination of employment.

29 (b) Demotion in employment.

- 1                    (c) Unfavorable reassignment of job duties.
- 2                    (d) Failure to promote.
- 3                    (e) Disciplinary action.
- 4                    (f) Reduction in employment compensation.

5                    (4) "Aggravating factor" means conduct described in Paragraph (1) of  
6 this Section if the conduct exploited an employee's known psychological or  
7 physical illness or disability. A single act shall not constitute an aggravating  
8 factor unless the conduct is an especially severe and egregious act.

9                    (5) "Constructive discharge" means an adverse employment action  
10 where:

11                    (a) The employee reasonably believed he or she was subjected to an  
12 abusive work environment.

13                    (b) The employee resigned because of that conduct.

14                    (c) The employer was aware of the abusive conduct prior to the  
15 resignation and failed to stop the abusive conduct.

16                    (6) "Psychological harm" means the impairment of a person's mental  
17 health, as established by competent evidence.

18                    (7) "Physical harm" means the impairment of a person's physical health  
19 or bodily integrity, as established by competent evidence.

20 §295.4. Abusive conduct prohibited

21                    A. An employee is prohibited from engaging in abusive conduct, as is  
22 defined in R.S. 23:295.3, and is liable for such abusive conduct that he commits  
23 against another employee.

24                    B. An employer is prohibited from engaging in abusive conduct, as is  
25 defined in R.S. 23:295.3, and is liable for such abusive conduct that he commits  
26 against his employee.

27 §295.5. Vicarious liability

28                    A. An employer shall be vicariously liable for his employee's violation of  
29 R.S. 23:295.4.

1           **B. When the employer is vicariously liable for the abusive conduct of his**  
2           **abusive employee, the employer may assert the claim of comparative fault**  
3           **against the complainant employee pursuant to R.S. 23:295.7, for a reduction in**  
4           **damages.**

5           **§295.6. Abusive work environment**

6           **A. An employer is prohibited from creating an abusive work**  
7           **environment, as is defined in R.S. 23:295.3, or failing to suppress an abusive**  
8           **work environment.**

9           **B. The employer shall be liable for damages caused to the complainant**  
10           **employee because of the failure, on the part of the employer, to take reasonable**  
11           **measures to protect the complainant employee from abusive conduct by another**  
12           **employee.**

13           **§295.7. Affirmative defenses; comparative fault**

14           **A. An employee, who would otherwise be liable for a violation of R.S.**  
15           **23:295.4, may claim an affirmative defense if he can show that the violation was**  
16           **committed at the direction of the employer and under an actual or an implied**  
17           **threat of an adverse employment action.**

18           **B. An employer who is alleged to have committed a violation of R.S.**  
19           **23:295.4, may assert an affirmative defense against a complainant employee for**  
20           **any of the following reasons:**

21           **(1) The complaint is based on an adverse employment action reasonably**  
22           **made for poor performance, misconduct, or economic necessity.**

23           **(2) The complaint is based on a reasonable performance evaluation**  
24           **which indicated negative aspects of the complainant employee's performance.**

25           **(3) The complaint is based on an employer's reasonable investigation**  
26           **about potentially illegal or unethical activity.**

27           **C. When the employer is subject to vicarious liability, pursuant to R.S.**  
28           **23:295.5, the employer shall be entitled to a reduction in damages for**  
29           **comparative fault, pursuant to Civil Code Art. 2323, if the complainant**

1 employee unreasonably failed to take advantage of appropriate preventive or  
2 corrective opportunities provided by the employer.

3 D. When the employer is liable for prohibitions related to an abusive  
4 work environment, pursuant to R.S. 23:295.6, the employer may assert an  
5 affirmative defense, if either of the following occurs:

6 (1) The employer exercised reasonable care to prevent and promptly  
7 correct any actionable behavior.

8 (2) The complainant employee unreasonably failed to take advantage of  
9 appropriate preventive or corrective opportunities provided by the employer.

10 §295.8. Retaliation prohibited

11 No employer or employee shall retaliate in any manner against an  
12 employee who has opposed any unlawful employment practice under this Part,  
13 or who has made a charge, testified, assisted, or participated in any manner in  
14 an investigation or proceeding under this Part, including but not limited to  
15 internal complaints and proceedings, arbitration, mediation proceedings, and  
16 legal actions.

17 §295.9. Civil actions; venue

18 A. An employee shall have a civil right of action for damages against the  
19 employer or employee for a violation of the provisions of R.S. 23:295.4, which  
20 prohibits abusive conduct, or against an employer pursuant to R.S. 23:295.5,  
21 which provides for vicarious liability, or against an employer for a violation of  
22 the provisions of R.S. 23:295.6, which prohibits creating or maintaining an  
23 abusive work environment.

24 B. Notwithstanding any provision of law to the contrary, such civil action  
25 may be instituted in a parish, city, or district court of proper venue as provided  
26 for in this Subsection, as follows:

27 (1) If the employer is a natural or juridical person, the venue for the civil  
28 action shall be proper if brought in the parish where the plaintiff is domiciled,  
29 or the parish where the abusive conduct or violation took place, or a parish of

1 proper venue pursuant to the general rules of venue as set forth in Code of Civil  
2 Procedure Article 42.

3 (2) If the employer is the state, venue for the civil action shall be proper  
4 in the Nineteenth Judicial District Court in East Baton Rouge Parish.

5 (3) If the employer is a public entity other than the state, venue shall be  
6 proper in the parish of its domicile.

7 §295.10. Remedies; damages

8 A. An employee or employer who violates the prohibitions in this Part  
9 and is subject to the provisions of R.S. 23:295.9(A) shall be liable to the  
10 complainant employee and the court may order any or all of the following:

11 (1) Enjoin the defendant from engaging in the abusive conduct.

12 (2) Order the employer to take necessary steps to remedy an abusive  
13 work environment.

14 (3) Order any other relief that is deemed appropriate including but not  
15 limited to reinstatement of the complainant employee or the removal of the  
16 offending employee from the complainant's work environment if a transfer to  
17 another work location is available.

18 (4) Order that the defendant pay the complainant employee lost wages,  
19 medical expenses, damages for pain and suffering, damages for emotional  
20 distress, damages for constructive discharge, attorney fees, and court costs.

21 B. When an employer is liable for a violation of R.S. 23:295.6, which  
22 provides for vicarious liability, or for a violation of the provisions of R.S.  
23 23:295.6, which prohibits creating or maintaining an abusive work  
24 environment, damages for emotional distress may be awarded only when the  
25 actionable conduct was extreme and outrageous or the actionable conduct was  
26 an aggravating factor which was reasonably foreseeable to cause psychological  
27 harm or physical harm.

28 §295.11. Limitation of action

29 Any civil action filed, pursuant to R.S. 23:295.9, shall be commenced no

1 later than one year from the date of the last act that constitutes the alleged  
2 violation of this Part.

3 §295.12. Miscellaneous provisions

4 A. Nothing in this chapter shall be interpreted to supersede any rights  
5 or obligations provided for pursuant to collective bargaining agreements.

6 B. The remedies provided in this Part shall be in addition to any  
7 remedies provided under any other law, and nothing in this Part shall relieve  
8 any person from any liability, duty, penalty, or punishment provided by any  
9 other law, except for those limitations provided for in Subsection C of this  
10 Section.

11 C. If a complainant employee is entitled to damages, pursuant to this  
12 Part, and the complainant employee has already received or is entitled to  
13 receive workers' compensation monies, pursuant to Chapter 10 of Title 23 of the  
14 Louisiana Revised Statutes of 1950, and both monetary awards are associated  
15 with the same injury or illness for the same period of time, the payments of  
16 workers' compensation shall be recouped from the damages paid to the  
17 complainant employee under this Part.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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DIGEST

SB 139 Original

2019 Regular Session

Gatti

Proposed law provides for the "Louisiana Healthy Workplace Law" which prohibits workplace bullying or harassment.

Proposed law provides for legislature findings as follows:

- (1) The social and economic well-being of the state of La. is dependent upon healthy and productive employees.
- (2) At least one-third of all employees will directly experience health-endangering workplace bullying, abuse, and harassment during their working lives, and this form of mistreatment is often even more prevalent than sexual harassment alone.
- (3) Workplace bullying and harassment can inflict serious harm upon targeted employees, including feelings of shame and humiliation, severe anxiety, depression, suicidal tendencies, impaired immune systems, hypertension, increased risk of cardiovascular disease, and symptoms consistent with post-traumatic stress disorder.

- (4) Abusive work environments can have serious consequences for employers, including reduced employee productivity and morale, higher turnover and absenteeism rates, and increases in medical and workers' compensation claims.
- (5) If mistreated employees who have been subjected to abusive treatment at work cannot establish that the behavior was motivated by race, color, religion, sex, national origin, age, disability, or veteran status, as is provided for in present law, the employees are unlikely to be protected by the law against such mistreatment.
- (6) Legal protection from abusive work environments should not be limited to behavior grounded in protected class status as that provided for under employment discrimination statutes.
- (7) Existing workers' compensation plans and tort actions are inadequate to discourage this behavior or to provide adequate relief to employees who have been harmed by abusive work environments.

Proposed law provides for the following purposes:

- (1) To provide legal relief for employees who have been harmed, psychologically, physically, or economically, by deliberate exposure to abusive work environments.
- (2) To provide a legal incentive for employers to prevent and expeditiously respond to abusive mistreatment of employees in the workplace.

Proposed law provides for the following definitions:

- (1) "Abusive conduct" means the acts or omissions that a reasonable person would find abusive based on the severity, nature, and frequency of the conduct, including but is not limited to any of the following:
  - (a) Repeated verbal abuse such as the use of derogatory remarks, insults, and epithets.
  - (b) Verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature.
  - (c) Sabotage or the undermining of an employee's work performance.
- (2) "Abusive work environment" means an employment condition created when an employer fails to take reasonably appropriate corrective action to prevent one or more of his employees from acting in a manner that subjects another employee to harassment or abusive conduct that causes physical harm or psychological harm.
- (3) "Adverse employment action" means an outcome which negatively impacts an employee including but not limited to any of the following:
  - (a) Termination of employment.
  - (b) Demotion in employment.
  - (c) Unfavorable reassignment of job duties.
  - (d) Failure to promote.
  - (e) Disciplinary action.
  - (f) Reduction in employment compensation.

- (4) "Aggravating factor" means abusive conduct if the conduct exploited an employee's known psychological or physical illness or disability. A single act will not constitute abusive conduct unless the conduct is an especially severe and egregious act.
- (5) "Constructive discharge" means an adverse employment action where:
- (a) The employee reasonably believed he or she was subjected to an abusive work environment.
  - (b) The employee resigned because of that conduct.
  - (c) The employer was aware of the abusive conduct prior to the resignation and failed to stop the abusive conduct.
- (6) "Psychological harm" means the impairment of a person's mental health, as established by competent evidence.
- (7) "Physical harm" means the impairment of a person's physical health or bodily integrity, as established by competent evidence.

Proposed law provides that an employee is prohibited from engaging in abusive conduct and is liable for such conduct committed against another employee.

Proposed law provides that an employer is prohibited from engaging in abusive conduct and is liable for such conduct committed against his employee.

Proposed law provides that an employer is vicariously liable for his employee's abusive conduct. Proposed law provides that, when the employer is vicariously liable for the abusive conduct of his abusive employee, the employer may assert the claim of comparative fault against the complainant employee for a reduction in damages.

Proposed law provides that an employer is prohibited from creating an abusive work environment, as is defined in proposed law, or failing to suppress the creation of an abusive work environment. Proposed law provides that the employer is liable for damages caused to the complainant employee because of the failure on the part of the employer to take reasonable measures to protect the employee from abusive conduct by another employee.

Proposed law provides that an employee, who would otherwise be liable for a violation of abusive conduct against a complainant employee, may claim an affirmative defense if he can show that the violation was committed at the direction of the employer and under an actual or an implied threat of an adverse employment action.

Proposed law provides that an employer, who is alleged to have engaged in abusive conduct in violation of proposed law, may assert an affirmative defense against a complainant employee for any of the following reasons:

- (1) The complaint is based on an adverse employment action reasonably made for poor performance, misconduct, or economic necessity.
- (2) The complaint is based on a reasonable performance evaluation which indicated negative aspects of the complainant employee's performance.
- (3) The complaint is based on an employer's reasonable investigation about potentially illegal or unethical activity.

Proposed law provides that, when the employer is subject to vicarious liability (i.e., strict liability for the actions of an employee), pursuant to proposed law, the employer will be entitled to a reduction in damages pursuant to present law, if the complainant employee

unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer.

Proposed law provides that when the employer is liable for provisions related to an abusive work environment, pursuant to proposed law, the employer may assert an affirmative defense, if either of the following occurs:

- (1) The employer exercised reasonable care to prevent and promptly correct any actionable behavior.
- (2) The complainant employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer.

Proposed law provides that no employer or employee shall retaliate in any manner against an employee who has opposed any unlawful employment practice under proposed law, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under proposed law, including but not limited to internal complaints and proceedings, arbitration and mediation proceedings, and legal actions.

Proposed law provides that an employee will have a civil right of action for damages against the employer or employee for abusive conduct, or against an employer for vicarious liability, or against an employer for creating or maintaining an abusive work environment.

Proposed law provides that such civil action may be instituted in a parish, city, or district court of proper venue, as follows:

- (1) If the employer is a natural or juridical person, venue for the civil action shall be proper if brought in the parish where the plaintiff is domiciled, or the parish where the abuse or violation was allegedly committed, or a parish of proper venue pursuant to the general rules of venue as set forth in present law.
- (2) If the employer is the state, venue for the civil action shall be proper in the 19th Judicial District Court in East Baton Rouge Parish.
- (3) If the employer is a public entity other than the state, venue shall be proper in the parish of its domicile.

Proposed law provides that when an employee or employer is found to have engaged in abusive conduct or when the employer is found to have created or maintained an abusive work environment, the court may order all of the following:

- (1) Enjoin the defendant from engaging in abusive conduct.
- (2) Order the employer to take necessary steps to remedy an abusive work environment.
- (3) Order any other relief that is deemed appropriate including but not limited to reinstatement, removal of the offending employee from the complainant's work environment if a transfer to another work location is available.
- (4) Order that the defendant pay the complainant employee lost wages, medical expenses, damages for pain and suffering, damages for emotional distress, damages for constructive discharge, attorney fees, and court costs.

Proposed law provides that, when an employer is liable under vicarious liability or liable for creating or maintaining an abusive work environment, damages for emotional distress may be awarded only when the actionable conduct was extreme and outrageous or the actionable conduct was an aggravating factor which was likely to cause psychological harm or physical harm.

Proposed law provides that any civil action filed pursuant to proposed law will be commenced within no later than one year from the date of the last act that constitutes the alleged violation of proposed law.

Proposed law provides that nothing in proposed law will be interpreted to supersede any rights or obligations provided for pursuant to collective bargaining agreements.

Proposed law provides that the remedies provided in proposed law will be in addition to any remedies provided under any other law, and nothing in proposed law will relieve any person from any liability, duty, penalty, or punishment provided by any other law.

Proposed law provides that, if a complainant employee is entitled to damages pursuant to proposed law and the complainant employee is entitled to receive workers' compensation indemnity payments (e.g., for lost wages or payments for medical costs) and both monetary awards are associated with the same injury or illness for the same period of time, the payments for workers' compensation will be recouped from the damages paid to the complainant employee under proposed law.

Effective August 1, 2019.

(Adds R.S. 23:295.1 - 295.12)