

## HOUSE BILL No. 2401

By Representative Swenson

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9 AN ACT enacting the healthy workplace act; relating to abusive work  
10 environments; prohibiting certain acts and providing certain remedies  
11 for violations.

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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. This act may be cited as the healthy workplace act.

15 Sec. 2. As used in this act:

16 (a) "Abusive conduct" means conduct of an employer or employee  
17 in the workplace, with malice, that a reasonable person would find hostile,  
18 offensive and unrelated to an employer's legitimate business interests. In  
19 considering whether abusive conduct is present, a trier of fact should  
20 weigh the severity, nature and frequency of the conduct. Abusive conduct  
21 may include, but is not limited to, repeated infliction of verbal abuse such  
22 as the use of derogatory remarks, insults and epithets; verbal or physical  
23 conduct that a reasonable person would find threatening, intimidating or  
24 humiliating; or the gratuitous sabotage or undermining of a person's work  
25 performance. A single act normally will not constitute abusive conduct,  
26 unless especially severe and egregious.

27 (b) "Abusive work environment" means a workplace where an em-  
28 ployee is subjected to abusive conduct that is so severe that it causes  
29 physical or psychological harm to the employee.

30 (c) "Conduct" means all forms of behavior, including acts and  
31 omissions of acts.

32 (d) "Constructive discharge" means abusive conduct which (1) causes  
33 the employee to resign, (2) prior to resigning, the employee brings to the  
34 employer's attention and (3) the employer fails to take reasonable steps  
35 to eliminate.

36 (e) "Employee" means an individual employed by an employer,  
37 whereby the individual's labor is either controlled by the employer or the  
38 individual is economically dependent upon the employer in return for  
39 labor rendered.

40 (f) "Employer" includes individuals, governments, governmental  
41 agencies, corporations, partnerships, associations and unincorporated or-  
42 ganizations that compensate individuals in return for performing labor.  
43 "Employer" also includes the state, subdivisions of the state, school dis-

1    tricts, community colleges, municipal or public corporations, political sub-  
2    divisions and institutions under the state board of regents.

3    (g) “Malice” means the desire to see another person suffer psycho-  
4    logical, physical or economic harm, without legitimate cause or justifica-  
5    tion. Malice may be inferred from the presence of factors such as: Out-  
6    ward expressions of hostility; harmful conduct inconsistent with an  
7    employer’s legitimate business interests; a continuation of harmful, ille-  
8    gitimate conduct after the complainant requests that it cease or demon-  
9    strates outward signs of emotional or physical distress in the face of the  
10    conduct; or attempts to exploit the complainant’s known psychological or  
11    physical vulnerability.

12    (h) “Negative employment decision” means a termination, construc-  
13    tive discharge, demotion, unfavorable reassignment, refusal to promote  
14    or disciplinary action.

15    (i) “Physical harm” means the material impairment of a person’s  
16    physical health or bodily integrity, as documented by a competent phy-  
17    sician or supported by competent expert evidence at trial.

18    (j) “Psychological harm” means the material impairment of a person’s  
19    mental health, as documented by a competent psychologist, psychiatrist  
20    or psychotherapist or supported by competent expert evidence at trial.

21    Sec. 3. (a) It is an unlawful employment practice under this part to  
22    subject an employee to an abusive work environment.

23    (b) An employer is vicariously liable for an unlawful employment  
24    practice in violation of this part committed by its employee.

25    (c) It is an unlawful employment practice under this act to retaliate  
26    in any manner against an employee because the employee has opposed  
27    any unlawful employment practice under this act, or because the em-  
28    ployee has made a charge, testified, assisted or participated in any manner  
29    in an investigation or proceeding under this act, including, but not limited  
30    to, internal proceedings, arbitration and mediation proceedings and legal  
31    actions.

32    Sec. 4. (a) It is an affirmative defense to an action for an abusive  
33    work environment that the employer exercised reasonable care to prevent  
34    and promptly correct the abusive conduct and the aggrieved employee  
35    unreasonably failed to take advantage of appropriate preventive or cor-  
36    rective opportunities provided by the employer. This defense is not avail-  
37    able when the abusive conduct culminates in a negative employment  
38    decision.

39    (b) It is an affirmative defense to an action for an abusive work en-  
40    vironment if the complaint is grounded primarily upon a negative em-  
41    ployment decision made consistent with an employer’s legitimate business  
42    interests, such as a termination or demotion based on an employee’s poor  
43    performance, or the complaint is grounded primarily upon an employer’s

1 reasonable investigation of potentially illegal or unethical activity.

2 Sec. 5. (a) If a defendant has been found to have committed an un-  
3 lawful employment practice under this act, the court may enjoin the de-  
4 fendant from engaging in the unlawful employment practice and may  
5 order any other relief that is deemed appropriate, including, but not lim-  
6 ited to, reinstatement, removal of the offending party from the complain-  
7 ant's work environment, back pay, front pay, medical expenses, compen-  
8 sation for emotional distress, punitive damages and reasonable attorney's  
9 fees.

10 (b) If an employer has been found to have committed an unlawful  
11 employment practice under this act that did not result in a negative em-  
12 ployment decision, the employer's liability for damages for emotional dis-  
13 tress may not exceed \$25,000 and the employer shall not be liable for  
14 punitive damages. This subsection does not apply to individually named  
15 co-employee defendants.

16 Sec. 6. (a) This act may be enforced solely by a private right of action.

17 (b) An action commenced under this part may be commenced no  
18 later than one year after the last act that comprises the alleged unlawful  
19 employment practice.

20 Sec. 7. (a) Nothing in this act construed to exempt or relieve any  
21 person from any liability, duty, penalty or punishment provided by any  
22 other law of this state.

23 (b) The remedies provided by this act are in addition to remedies  
24 under the workers compensation act. However, a person who believes  
25 that the person has been subjected to an unlawful employment practice  
26 under this act may elect to accept workers compensation benefits in con-  
27 nection with the underlying behavior in lieu of bringing an action under  
28 this act. A person who elects to accept workers compensation benefits  
29 may not bring an action under this act for the same underlying behavior.

30 Sec. 8. This act shall take effect and be in force from and after its  
31 publication in the statute book.