

## HOUSE BILL NO. HB0262

Healthy workplace.

Sponsored by: Representative(s) Zwonitzer, Dn.

## A BILL

for

1 AN ACT relating to labor and employment; providing for a  
2 civil action for unlawful employment practices as  
3 specified; establishing affirmative defenses; providing a  
4 statement of intent; providing definitions; and providing  
5 for an effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 27-15-101 through 27-15-108 are  
10 created to read:

11

12 CHAPTER 15

13 HEALTHY WORKPLACE ACT

14

15 **27-15-101. Short title; statement of intent.**

16

1           (a) This act may be cited as the "Wyoming Healthy  
2 Workplace Act."

3

4           (b) It is the purpose of this act:

5

6                   (i) To provide legal incentive for employers to  
7 prevent and respond to abusive mistreatment of employees at  
8 work;

9

10                   (ii) To provide legal relief for employees who  
11 have been harmed psychologically, physically or  
12 economically by being subjected to abusive work  
13 environments.

14

15           **27-15-102. Definitions.**

16

17           (a) As used in this act:

18

19                   (i) "Abusive conduct" means conduct including  
20 acts, omissions or both that a reasonable person would find  
21 hostile based on the severity, nature and frequency of the  
22 conduct. "Abusive conduct" may include, without  
23 limitation:

24

1 (A) Repeated verbal abuse including  
2 derogatory remarks, insults or epithets;

3

4 (B) Verbal or physical conduct of a  
5 threatening, intimidating or humiliating nature;

6

7 (C) The sabotage or undermining of an  
8 employee's work performance;

9

10 (D) Exploiting or attempting to exploit an  
11 employee's known psychological or physical vulnerability.

12

13 (ii) "Abusive work environment" means that a  
14 person is subject to abusive conduct at a place of work and  
15 the abusive conduct causes tangible harm to the employee;

16

17 (iii) "Adverse employment action" includes,  
18 without limitation, termination, demotion, unfavorable  
19 reassignment, failure to promote, disciplinary action or  
20 reduction in compensation;

21

22 (iv) "Constructive discharge" means that an  
23 employee reasonably believed he was subject to abusive  
24 conduct, the employee resigned employment because of the

1 abusive conduct and the employee notified the employer of  
2 the abusive conduct prior to resigning and the employer  
3 failed to take reasonable steps to correct the conduct;

4  
5 (v) "Malice" means the desire to cause pain,  
6 injury or distress to another;

7  
8 (vi) "Tangible harm" means:

9  
10 (A) Psychological harm through the material  
11 impairment of a person's mental health, as established  
12 through competent evidence; or

13  
14 (B) Physical harm through the material  
15 impairment of a person's physical health or bodily  
16 integrity as established through competent evidence.

17  
18 (vii) "This act" means W.S. 27-15-101 through  
19 27-15-108.

20  
21 **27-15-103. Unlawful employment practices.**

1           (a) Subjecting an employee to an abusive work  
2 environment shall be considered an unlawful employment  
3 practice under this act.

4

5           (b) Retaliation against an employee who has opposed  
6 an unlawful employment practice under this act or who has  
7 made a charge pursuant to this act or testified, assisted  
8 or participated in any manner in an investigation or  
9 proceeding under this act shall be considered an unlawful  
10 employment practice under this act.

11

12           **27-15-104. Employer liability; defense.**

13

14           (a) An employer shall be vicariously liable for any  
15 unlawful employment practice under this act committed by  
16 its employee.

17

18           (b) If the unlawful employment practice did not  
19 include an adverse employment action, it shall be an  
20 affirmative defense to liability under subsection (a) of  
21 this section that:

22

23           (i) The employer exercised reasonable care to  
24 prevent and promptly corrected any abusive conduct; or

1

2 (ii) The complainant employee unreasonably  
3 failed to take advantage of preventive or corrective  
4 opportunities provided by the employer.

5

6 **27-15-105. Employee liability; defense.**

7

8 (a) An employee may be held individually liable for  
9 an unlawful employment practice under this act.

10

11 (b) It shall be an affirmative defense to liability  
12 under subsection (a) of this section that the employee  
13 committed an unlawful employment practice under this act at  
14 the direction of the employer under threat of adverse  
15 employment action.

16

17 **27-15-106. Affirmative defenses.**

18

19 (a) It shall be an affirmative defense to liability  
20 for an unlawful employment practice under this act that:

21

22 (i) The complaint is based on an adverse  
23 employment action reasonably made for poor performance,  
24 misconduct or economic necessity;

1

2 (ii) The complaint is based on a reasonable  
3 performance evaluation; or

4

5 (iii) The complaint is based on a defendant's  
6 reasonable investigation into illegal or unethical  
7 activity.

8

9 **27-15-107. Relief.**

10

11 (a) If a defendant is found to have committed an  
12 unlawful employment practice under this act, a court may  
13 enjoin the defendant from engaging in the unlawful  
14 employment practice and may order any other relief that the  
15 court deems appropriate including, without limitation,  
16 reinstatement, removal of the offending party from the  
17 complainant's work environment, back pay, front pay,  
18 medical expenses, compensation for emotional distress,  
19 punitive damages and attorney's fees.

20

21 (b) If an employer is found to have committed an  
22 unlawful employment practice that did not result in an  
23 adverse employment action against the complainant, the  
24 employer's liability for damages and emotional distress

1 shall not exceed twenty-five thousand dollars (\$25,000.00).  
2 This subsection shall not apply to individually named  
3 employee defendants.

4  
5 (c) Except as provided in subsection (d) of this  
6 section, the provisions of this act shall be in addition to  
7 any other provision of law. Nothing in this act shall  
8 relieve any person from criminal or civil liability or any  
9 duty, penalty or punishment provided by any other law.

10

11 (d) Notwithstanding subsection (c) of this section,  
12 if an employee receives worker's compensation benefits for  
13 medical costs and receives relief under this act for the  
14 same injury or illness for the same time period, the  
15 worker's compensation payments shall be repaid from any  
16 relief paid through a civil action brought under this act.

17

18 **27-15-108. Civil action; limitations.**

19

20 (a) This act shall be enforced solely through a civil  
21 action.

22

23 (b) A civil action brought pursuant to this act shall  
24 be commenced not later than one (1) year after the last act



1 that constitutes an unlawful employment practice under this  
2 act.

3

4 **Section 2.** W.S. 27-14-511 is amended to read:

5

6 **27-14-511. Recovery of benefits paid by mistake or**  
7 **fraud; repayment of benefits.**

8

9 (a) The attorney general may bring a civil action to  
10 recover the value of any benefits or other monies paid  
11 under this act due to mistake, misrepresentation or fraud.  
12 The attorney general shall be entitled to recover the costs  
13 of suit and reasonable attorney fees in cases of  
14 misrepresentation or fraud. Nothing in this section shall  
15 prohibit a criminal prosecution where appropriate. Any  
16 civil action for recovery of overpayment resulting from a  
17 mistake by the division shall be commenced within one (1)  
18 year after the alleged overpayment and shall be limited to  
19 recovery of those mistaken payments made within twelve (12)  
20 months before the commencement of the action.

21

22 (b) As provided in W.S. 27-15-107(d) an employee  
23 shall repay any benefits received under this act to the  
24 extent that the employee received relief under the Wyoming

1 Healthy Workplace Act for the same injury or illness for  
2 the same time period. The repayment shall be made not less  
3 than sixty (60) days after relief is received under the  
4 Wyoming Healthy Workplace Act. The attorney general may  
5 bring a civil action to recover the value of any benefits  
6 or other monies which are not repaid as required under this  
7 subsection. Any civil action for recovery of benefits which  
8 are not repaid under this subsection shall be commenced  
9 within one (1) year after the expiration of the sixty (60)  
10 day period provided under this subsection.

11

12           **Section 3.** This act is effective July 1, 2011.

13

14 (END)