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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;
 - imposing requirements for a policy;
 - allowing for affirmative defenses; and
 - providing for 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



- 28 **34A-12-201**, Utah Code Annotated 1953
- 29 **34A-12-202**, Utah Code Annotated 1953
- 30 **34A-12-203**, Utah Code Annotated 1953
- 31 **34A-12-301**, Utah Code Annotated 1953



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

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

35 **CHAPTER 12. ABUSIVE WORKPLACE POLICIES ACT**

36 **Part 1. General Provisions**

37 **34A-12-101. Title.**

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 state agency;
- 69 (ii) an institution of higher education as defined in Section 53B-3-102; or
- 70 (iii) a public authority legally constituted by the state as an administrative agency to
- 71 provide control of and direction for public education.
- 72 (b) "Employer" includes an agent of an employer.
- 73 (8) "Malice" means the desire to cause pain, injury, or distress to another.
- 74 (9) "Neutral body" means an entity that has at least a majority of the voting members
- 75 who are not involved in the employment setting at issue.
- 76 (10) "Physical harm" is the material impairment of an individual's physical health or
- 77 bodily integrity, as established by competent evidence.
- 78 (11) "Psychological harm" means a material impairment of an individual's mental
- 79 health, as established by competent evidence.
- 80 (12) "Tangible harm" means:
- 81 (a) physical harm; or
- 82 (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

90 **34A-12-201. Policy against abusive workplace required.**

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

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

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

94 employee who:

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

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

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

98 under this chapter, including:

99 (A) an internal complaint or proceeding;

100 (B) an arbitration or mediation proceeding; or

101 (C) a legal action.

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

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

104 **34A-12-202. Procedural requirements for policy.**

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

106 (1) provide a procedure for:

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

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

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

113 (a) an outward expression of hostility;

114 (b) harmful conduct inconsistent with an employer's legitimate business interests;

115 (c) a continuation of harmful, illegitimate conduct after the aggrieved employee:

116 (i) requests that the conduct cease; or

117 (ii) demonstrates outward signs of emotional or physical distress in the face of the
118 conduct; or

119 (d) attempts to exploit an aggrieved employee's known psychological or physical
120 vulnerability; and

- 121 (3) provide one or more remedies that address:
- 122 (a) preventing abusive conduct in the future; and
- 123 (b) remedying a tangible harm to an aggrieved employee.

124 Section 6. Section **34A-12-203** is enacted to read:

125 **34A-12-203. Affirmative defenses allowed.**

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

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

132 Section 7. Section **34A-12-301** is enacted to read:

133 **Part 3. Civil Enforcement**

134 **34A-12-301. Private right of action.**

- 135 (1) An employee may enforce this chapter solely by a private right of action.
- 136 (2) (a) An employee may file a civil action in a court of competent jurisdiction to
137 obtain relief under this chapter.
- 138 (b) An employee may not commence an action under this chapter more than one year
139 after the last conduct that constitutes alleged prohibited workplace practice to which a policy
140 would apply.
- 141 (3) If a court finds that an employer fails to have a policy that complies with this
142 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