2013 DRAFTING REQUEST

Bill

Received:	**4/2/2013**	Received By:	**gmalaise**
Wanted:	**As time permits**	Same as LRB:	
For:	**Sondy Pope (608) 266-3520**	By/Representing:	**Tom McCarthy**
May Contact:		Drafter:	**gmalaise**
Subject:	**Employ Priv - health and safety**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Pope@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Abusive work environment prohibited

Instructions:

See attached--redraft 2011 AB 364

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 4/2/2013	scalvin 4/9/2013	rschluet 4/10/2013	_____ _____			
/1				_____ _____	sbasford 4/10/2013	lparisi 4/16/2013	

FE Sent For:

Not Needed

<END>

2013 DRAFTING REQUEST

Bill

Received:	**4/2/2013**	Received By:	**gmalaise**
Wanted:	**As time permits**	Same as LRB:	
For:	**Sondy Pope (608) 266-3520**	By/Representing:	**Tom McCarthy**
May Contact:		Drafter:	**gmalaise**
Subject:	**Employ Priv - health and safety**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Pope@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Abusive work environment prohibited

Instructions:

See attached--redraft 2011 AB 364

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 4/2/2013	scalvin 4/9/2013	rschluet 4/10/2013	_____ _____			
/1				_____ _____	sbasford 4/10/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received:	**4/2/2013**	Received By:	**gmalaise**
Wanted:	**As time permits**	Same as LRB:	
For:	**Sondy Pope (608) 266-3520**	By/Representing:	**Tom McCarthy**
May Contact:		Drafter:	**gmalaise**
Subject:	**Employ Priv - health and safety**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Pope@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Abusive work environment prohibited

Instructions:

See attached--redraft 2011 AB 364

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise	/1 sac 04/09/2013	4913 p4				

FE Sent For:

<END>

Malaise, Gordon

From: McCarthy, Tom
Sent: Monday, April 01, 2013 3:37 PM
To: Malaise, Gordon
Subject: Re Draft

Gordon,

Can we please have 2011 AB 364 redrafted for Rep. Pope to introduce this session? Thanks,

-tom

Tom McCarthy
Office of Rep. Sondy Pope
111 North, State Capitol
(608) 266-3520
tom.mccarthy@legis.wi.gov

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-~~2300/2~~ 2052/1
GMM:medrs

2011 ASSEMBLY BILL 364

November 9, 2011 – Introduced by Representatives Roys, E. Coggs, Grigsby, Kessler, Pasch, Pocan, Steinbrink, C. Taylor, Toles, Turner and Zamarripa, cosponsored by Senators S. Coggs and C. Larson. Referred to Committee on Labor and Workforce Development.

AN ACT *to amend* 814.04 (intro.); and *to create* 103.08 and 893.997 of the statutes; **relating to:** prohibiting abusive work environments and permitting a person who has been subject to such an environment to bring a civil action.

Analysis by the Legislative Reference Bureau

Current law. Under current law, worker's compensation is generally the exclusive remedy of an employee against his or her employer, a coemployee, or the employer's worker's compensation insurer for an injury sustained while performing services growing out of and incidental to employment.

Civil action for abusive work environment. This bill provides an exception to that exclusive remedy provision permitting an employee who alleges that he or she has been injured by being subjected to an abusive work environment or by being subjected to retaliation or a threat of retaliation for opposing an abusive work environment or for initiating or in any manner participating in an investigation, action, or proceeding to enforce the right not to be subjected to an abusive work environment (collectively "unlawful employment practice") to bring an action in circuit court against the employer or employee who allegedly engaged in the unlawful employment practice for such relief as the court may consider appropriate. Such an action must be commenced by the employee (aggrieved employee) within one year after the last act constituting the unlawful employment practice occurred or be barred.

Relief. If the circuit court finds that an employer or employee has engaged in an unlawful employment practice, the court may enjoin the employer or employee

from engaging in that practice and may grant such other relief as the court may consider appropriate, including reinstatement of the aggrieved employee, removal of the person who engaged in the abusive conduct giving rise to the unlawful employment practice from the aggrieved employee's work area, medical expenses, back pay, front pay, compensation for emotional distress, punitive damages, and reasonable costs and attorney fees. If the circuit court orders any payment of money because of an unlawful employment practice engaged in by an employee, the employer of the employee is liable for that payment. If an employer is found to have engaged in an unlawful employment practice that did not result in an adverse employment action against the aggrieved employee, the employer's liability for compensation for emotional distress may not exceed $10,000 and the employer is not liable for punitive damages.

Affirmative defenses. The bill permits an employer or employee against whom an aggrieved employee brings an action for an unlawful employment practice to plead affirmative defenses as follows:

1. If the alleged unlawful employment practice did not result in an adverse employment action against the aggrieved employee, the employer may plead as an affirmative defense that: a) the employer exercised reasonable care to prevent and promptly correct the abusive conduct that was the basis for the aggrieved employee's cause of action; and b) the aggrieved employee unreasonably failed to take advantage of appropriate opportunities provided by the employer to prevent or correct that abusive conduct.

2. If the alleged unlawful employment practice resulted in an adverse employment action against the aggrieved employee, the employer may plead as an affirmative defense that the aggrieved employee's complaint is based on: a) an adverse employment action that was reasonably taken for poor performance, misconduct, or economic necessity; b) an adverse employment action that was taken in response to a reasonable performance evaluation; or c) a reasonable investigation of a potentially illegal or unethical activity.

3. An employee who is alleged to have engaged in an unlawful employment practice may plead as an affirmative defense that the employee engaged in that practice at the direction of the employer under threat of an adverse employment action against the employee for not engaging in that practice.

Definitions. For purposes of the bill:

1. "Abusive work environment" means a work environment in which an employee is subjected to abusive conduct that is so severe that it causes tangible harm, *i.e.,* material impairment of physical or mental health or bodily integrity, to the employee.

2. "Abusive conduct" means conduct, including acts or omissions, by an employer or employee, with malice, *i.e.,* intent to cause pain, injury, or distress to another person without legitimate cause or justification, that a reasonable person would find to be hostile based on the severity, nature, and frequency of the conduct. "Abusive conduct" includes repeated infliction of verbal abuse such as derogatory remarks, insults, and epithets; verbal or physical conduct that is threatening, intimidating, or humiliating; sabotage or undermining of an employee's work

performance; or exploitation of an employee's known psychological or physical vulnerability. "Abusive conduct," however, does not include a single act unless that act is especially severe or egregious.

3. "Adverse employment action" means an action taken by an employer with respect to an employee that has the effect, in whole or in part, of a penalty, including dismissal or suspension from employment, demotion, denial of a promotion, unfavorable transfer or reassignment, reduction in compensation, or denial of increased compensation. "Adverse employment action" also includes a constructive discharge, which is defined in the bill as a situation in which an employee resigns from employment because the employee reasonably believes that he or she was subjected to abusive conduct and, prior to resigning, the employee notified the employer of the abusive conduct and the employer failed to take reasonable steps to eliminate the abusive conduct.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 103.08 of the statutes is created to read:

2 **103.08 Abusive work environments. (1)** DEFINITIONS. In this section:

3 (a) "Abusive conduct" means conduct, including acts or omissions, by an
4 employer or employee, with malice, that a reasonable person would find to be hostile
5 based on the severity, nature, and frequency of the conduct. "Abusive conduct"
6 includes repeated infliction of verbal abuse such as derogatory remarks, insults, and
7 epithets; verbal or physical conduct that is threatening, intimidating, or
8 humiliating; sabotage or undermining of an employee's work performance; or
9 exploitation of an employee's known psychological or physical vulnerability.
10 "Abusive conduct" does not include a single act unless that act is especially severe
11 or egregious.

12 (b) "Abusive work environment" means a work environment in which an
13 employee is subjected to abusive conduct that is so severe that it causes tangible
14 harm to the employee.

1 (c) "Adverse employment action" means an action taken by an employer with
2 respect to an employee that has the effect, in whole or in part, of a penalty, including
3 dismissal or suspension from employment, demotion, denial of a promotion,
4 unfavorable transfer or reassignment, reduction in compensation, or denial of
5 increased compensation. "Adverse employment action" also includes a constructive
6 discharge.

7 (d) "Aggrieved employee" means an employee who brings an action under sub.
8 (3) alleging that he or she has been injured by an unlawful employment practice.

9 (e) "Constructive discharge" means a situation in which an employee resigns
10 from employment because the employee reasonably believes that he or she was
11 subjected to abusive conduct and, prior to resigning, the employee notified the
12 employer of the abusive conduct and the employer failed to take reasonable steps to
13 eliminate the abusive conduct.

14 (f) "Employee" means an individual employed by an employer.

15 (g) "Employer" means a person engaging in any activity, enterprise, or business
16 in this state employing one or more persons on a permanent basis. "Employer"
17 includes the state and any office, department, independent agency, authority,
18 institution, association, society, or other body in state government created or
19 authorized to be created by the constitution or any law, including the legislature and
20 the courts.

21 (h) "Malice" means the intent to cause pain, injury, or distress to another
22 person, without legitimate cause or justification.

23 (i) "Retaliate" means to take an action that negatively affects the terms,
24 conditions, and privileges of an employee's employment.

(j) "Tangible harm" means any material impairment of a person's physical or mental health or bodily integrity.

(k) "Unlawful employment practice" means an an unlawful employment practice prohibited under sub. (2).

(2) ABUSIVE WORK ENVIRONMENT PROHIBITED. (a) It is an unlawful employment practice for an employer or employee to subject an employee to an abusive work environment.

(b) It is an unlawful employment practice for an employer or employee to retaliate or threaten to retaliate in any manner against an employee for any of the following reasons:

1. Because the employee opposed an unlawful employment practice.

2. Because the employee initiated, testified in, assisted in, or in any other manner participated in an investigation, action, or proceeding to enforce a right under this section, including any internal investigation or proceeding, any mediation or arbitration proceeding, or any court action.

3. Because the employer believes that the employee engaged in the conduct described in subd. 1. or 2.

(c) The prohibitions under pars. (a) and (b) may be enforced only by a civil cause of action brought under sub. (3).

(3) CIVIL CAUSE OF ACTION. In addition to obtaining any other remedy provided by law, an employee who alleges that he or she has been injured by an unlawful employment practice may bring an action in circuit court against the employer or employee who allegedly engaged in the unlawful employment practice for such relief under sub. (5) as the court may consider appropriate. An action under this

1 subsection shall be commenced within one year after the last act constituting the
2 unlawful employment practice occurred or be barred.

3 **(4)** AFFIRMATIVE DEFENSES. (a) If the alleged unlawful employment practice did
4 not result in an adverse employment action against the aggrieved employee, the
5 employer may plead as an affirmative defense that all of the following are true:

6 1. The employer exercised reasonable care to prevent and promptly correct the
7 abusive conduct that was the basis for the aggrieved employee's cause of action.

8 2. The aggrieved employee unreasonably failed to take advantage of
9 appropriate opportunities provided by the employer to prevent or correct that
10 abusive conduct.

11 (b) If the alleged unlawful employment practice resulted in an adverse
12 employment action against the aggrieved employee, the employer may plead as an
13 affirmative defense that the aggrieved employee's complaint is based on any of the
14 following:

15 1. An adverse employment action that was reasonably taken for poor
16 performance, misconduct, or economic necessity.

17 2. An adverse employment action that was taken in response to a reasonable
18 performance evaluation.

19 3. A reasonable investigation of a potentially illegal or unethical activity.

20 (c) An employee who is alleged to have engaged in an unlawful employment
21 practice may plead as an affirmative defense that the employee engaged in that
22 practice at the direction of the employer under threat of an adverse employment
23 action against the employee for not engaging in that practice.

24 **(5)** RELIEF. (a) Subject to par. (b), if the circuit court finds that an employer or
25 employee has engaged in an unlawful employment practice, the court may enjoin the

employer or employee from engaging in that practice and may grant such other relief as the court may consider appropriate, including reinstatement of the aggrieved employee, removal of the person who engaged in the abusive conduct giving rise to the unlawful employment practice from the aggrieved employee's work area, medical expenses, back pay, front pay, compensation for emotional distress, punitive damages under s. 895.043, and, notwithstanding s. 814.04 (1), reasonable costs and attorney fees. If the circuit court orders any payment under this paragraph because of an unlawful employment practice engaged in by an employee, the employer of the employee is liable for that payment.

(b) If an employer is found to have engaged in an unlawful employment practice that did not result in an adverse employment action against the aggrieved employee, the employer's liability for compensation for emotional distress may not exceed $10,000 and the employer is not liable for punitive damages.

SECTION 2. 814.04 (intro.) of the statutes, ~~as affected by 2011 Wisconsin Act 2,~~ is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.195 (5m) (b), 100.30 (5m), 103.08 (5) (a), 106.50 (6) (i) and (6m) (a), ~~111.397 (2) (a),~~ 115.80 (9), ~~281.36 (2) (b) 1.~~ 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

SECTION 3. 893.997 of the statutes is created to read:

893.997 Abusive work environment. Any civil action arising under s. 103.08 is subject to the limitations of s. 103.08 (3).

SECTION 4. Initial applicability.

1 (1) ABUSIVE WORK ENVIRONMENT. This act first applies to an unlawful
2 employment practice, as defined in section 103.08 (1) (k) of the statues, as created
3 by this act, committed on the effective date of this subsection.

4 **(END)**

Rose, Stefanie

From: McCarthy, Tom
Sent: Tuesday, April 16, 2013 10:07 AM
To: LRB.Legal
Subject: Draft Review: LRB -2052/1 Topic: Abusive work environment prohibited

Please Jacket LRB -2052/1 for the ASSEMBLY.