

**2009 DRAFTING REQUEST**

**Bill**

Received: 10/22/2009

Received By: gmalaise

Wanted: Soon

Companion to LRB:

For: Kelda Helen Roys (608) 266-5340

By/Representing: Emily McWilliams

May Contact:

Drafter: gmalaise

Subject: Employ Priv - health and safety

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Roys@legis.wisconsin.gov

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Abusive workplace environment prohibited

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 11/05/2009	jdye 11/19/2009		_____			S&L
/1			mduchek 11/20/2009	_____	sbasford 11/20/2009	lparisi 03/23/2010	

FE Sent For: "/1" @ intro. 3/24/10

<END>

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/?	gmalaise	1/19 jld	1/20 ph	1/20 ph			

FE Sent For: <END>

**Malaise, Gordon**

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**From:** McWilliams, Emily  
**Sent:** Monday, October 19, 2009 4:06 PM  
**To:** Malaise, Gordon  
**Subject:** Healthy Workplace model bill

**Attachments:** Healthy Workplace 1.pdf; Healthy Workplace 2.pdf; Healthy Workplace 4.pdf; Healthy Workplace 3.pdf; Healthy Workplace 5.pdf

Hi Gordon,

Attached is the language for the Healthy Workplace bill. Please let me know if you have any questions and thank you for working on this for us!

Emily



Healthy Workplace 1.pdf (47 KB...    Healthy Workplace 2.pdf (61 KB...    Healthy Workplace 4.pdf (62 KB...    Healthy Workplace 3.pdf (75 KB...    Healthy Workplace 5.pdf (67 KB...

Emily McWilliams  
Legislative Assistant to Rep. Roys

**KELDA HELEN ROYS**  
STATE REPRESENTATIVE  
81st District \* Wisconsin State Assembly  
State Capitol \* Room 7 North  
P.O. Box 8953 \* Madison, WI 53708  
(608) 266-5340 \* Fax (608) 282-3681  
Rep.Roys@legis.wi.gov

Existing law makes it an unlawful employment practice for an employer, including any person acting directly or indirectly as an agent of the employer, to harass any employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

This bill would make it an unlawful employment practice to subject an employee to an abusive work environment, as defined, and would specify that an employer is vicariously liable for a violation committed by its employee, but would prescribe certain affirmative defenses. The bill would also make it an unlawful employment practice to retaliate against an employee, because the employee has opposed an unlawful employment practice under the bill or has made a charge, testified, assisted, or participated in an investigation or proceeding under the bill. The bill would specify that it is enforceable solely by a private right of action, would authorize injunctive relief and would limit an employer's liability for emotional distress to \$25,000 where the unlawful employment practice does not result in a negative employment decision, as defined. The bill would provide that an aggrieved employee may elect to seek compensation under the bill or the employee's workers' compensation remedy, but may not accept workers' compensation and bring an action under the bill for the same underlying behavior.

SECTION I -- PREAMBLE

(a) Findings

The Legislature finds that:

- ✓ (1) The social and economic well-being of the State is dependent upon healthy and productive employees;
- (2) Between 37 and 59 percent of employees directly experience health-endangering workplace bullying, abuse, and harassment, and this mistreatment is approximately four times more prevalent than sexual harassment alone;
- ✓ (3) Workplace bullying, mobbing, 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;
- 7 (5) If mistreated employees who have been subjected to abusive treatment at work cannot establish that the behavior was motivated by race, color, sex, sexual orientation, national origin, or age, they 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; and,
- ✓ (7) Existing workers' compensation plans and common-law tort actions are inadequate to discourage this behavior or to provide adequate relief to employees who have been harmed by abusive work environments.

(b) Purpose

It is the purpose of this Chapter:

- (1) To provide legal incentive for employers to prevent and respond to abusive mistreatment of employees at work;
- (2) To provide legal relief for employees who have been harmed, psychologically, physically, or economically, by being deliberately subjected to abusive work environments.

SECTION 2 -- DEFINITIONS

*try to match stress in §*

(a) Abusive work environment. An abusive work environment exists when the defendant, acting with malice, subjects an employee to abusive conduct so severe that it causes tangible harm to the employee.

*too broad?*

(1) Abusive conduct. Abusive conduct is conduct, including acts, omissions, or both, that a reasonable person would find hostile, based on the severity, nature, and frequency of the defendant's conduct. Abusive conduct may include, but is not limited to: repeated infliction of verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal or physical conduct of a threatening, intimidating, or humiliating nature; the sabotage or undermining of an employee's work performance; or attempts to exploit an employee's known psychological or physical vulnerability. A single act normally will not constitute abusive conduct, but an especially severe and egregious act may meet this standard.

(2) Malice. Malice is defined as the desire to cause pain, injury, or distress to another.

(b) Tangible harm. Tangible harm is defined as psychological harm or physical harm.

(1) Psychological harm. Psychological harm is the material impairment of a person's mental health, as established by competent evidence.

(2) Physical harm. Physical harm is the material impairment of a person's physical health or bodily integrity, as established by competent evidence.

(c) Adverse employment action. An adverse employment action includes, but is not limited to, a termination, demotion, unfavorable reassignment, failure to promote, disciplinary action, or reduction in compensation.

*anywhere else in statutes?*

(d) Constructive discharge. A constructive discharge shall be considered a termination, and, therefore, an adverse employment action within the meaning of this Chapter. A constructive discharge exists where: (1) the employee reasonably believed he or she was subjected to abusive conduct; (2) the employee resigned because of that abusive conduct; and, (3) prior to resigning, the employee brought to the employer's attention the existence of the abusive conduct and the employer failed to take reasonable steps to correct the situation.

SECTION 3 - UNLAWFUL EMPLOYMENT PRACTICES

(a) Abusive Work Environment. It shall be an unlawful employment practice under this Chapter to subject an employee to an abusive work environment as defined by this Chapter.

*define retaliation*

(b) Retaliation. It shall be an unlawful employment practice under this Chapter to retaliate in any manner against an employee who has opposed any unlawful employment practice under this Chapter, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this Chapter, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings, and legal actions.

SECTION 4 – EMPLOYER LIABILITY AND DEFENSE

(a) An employer shall be vicariously liable for an unlawful employment practice, as defined by this Chapter, committed by its employee.

(b) Where the alleged unlawful employment practice does not include an adverse employment action, it shall be an affirmative defense for an employer only that:

(1) the employer exercised reasonable care to prevent and correct promptly any actionable behavior; and,

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

SECTION 5 – EMPLOYEE LIABILITY AND DEFENSE

(a) An employee may be individually liable for an unlawful employment practice as defined by this Chapter.

(b) It shall be an affirmative defense for an employee only that the employee committed an unlawful employment practice as defined in this Chapter at the direction of the employer, under threat of an adverse employment action.

*why needed?*

SECTION 6 – AFFIRMATIVE DEFENSES

It shall be an affirmative defense that:

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

(b) The complaint is based on a reasonable performance evaluation; or,

(c) The complaint is based on a defendant's reasonable investigation about potentially illegal or unethical activity.



SECTION 7 -- RELIEF

(a) Relief generally. Where a defendant has been found to have committed an unlawful employment practice under this Chapter, the court may enjoin the defendant from engaging in the unlawful employment practice and may order any other relief that is deemed appropriate, including, but not limited to, reinstatement, removal of the offending party from the complainant's work environment, back pay, front pay, medical expenses, compensation for emotional distress, punitive damages, and attorney's fees.

(b) Employer liability. Where an employer has been found to have committed an unlawful employment practice under this Chapter that did not culminate in an adverse employment action, its liability for damages for emotional distress shall not exceed \$25,000, and it shall not be subject to punitive damages. This provision does not apply to individually named employee defendants.

SECTION 8 -- PROCEDURES

(a) Private right of action. This Chapter shall be enforced solely by a private right of action.

(b) Time limitations. An action commenced under this Chapter must be commenced no later than one year after the last act that constitutes the alleged unlawful employment practice.

SECTION 9 -- EFFECT ON OTHER LEGAL RELATIONSHIPS

The remedies provided for in this Chapter shall be in addition to any remedies provided under any other law, and nothing in this Chapter shall relieve any person from any liability, duty, penalty or punishment provided by any other law, except that if an employee receives workers' compensation for medical costs for the same injury or illness pursuant to both this Chapter and the workers' compensation law, or compensation under both this Chapter and that law in cash payments for the same period of time not working as a result of the compensable injury or illness or the unlawful employment practice, the payments of workers' compensation shall be reimbursed from compensation paid under this Chapter.

###

What are current torts available - civil  
( & criminal ) remedies ?



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-3738/7 ①

GMM:.....

SN 1115

JLd

x

Gen

1 AN ACT ...; relating to: prohibiting abusive work environments and permitting  
2 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 \$25,000 and the employer is not liable for punitive damages.

aggrieved

**Affirmative defenses.** The bill permits an employer or employee against whom an 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.

**Double recovery prohibited.** Finally, the bill requires the court to reduce the amount awarded for medical expenses, back pay, or front pay in an action for an unlawful employment practice by the amount of medical expenses or disability benefits that the employer's worker's compensation insurer, the employer, if self-insured, or the Department of Workforce Development (DWD), if the employer is uninsured, has paid or is obligated to pay under the worker's compensation law for an injury arising out of the same underlying behavior as the behavior giving rise to the unlawful employment practice and to order the employer to reimburse the insurer or DWD for the amount of the medical expenses or disability benefits that the insurer or DWD has paid or is obligated to pay under the worker's compensation law or for the amount awarded in the action for medical expenses, back pay, or front pay, whichever is less.

\*

Similarly, the bill provides that if the aggrieved employee recovers medical expenses, back pay, or front pay in an action for an unlawful employment practice arising out of the same underlying behavior as the behavior giving rise to an injury that is compensable under the worker's compensation law, the amount payable for

\*

medical expenses or disability benefits under the worker's compensation law for that injury is reduced by the amount recovered for medical expenses, back pay, or front pay under the unlawful employment practice action.

**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.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1           **SECTION 1.** 102.03 (2) of the statutes is amended to read:
- 2           102.03 (2) ~~Where such~~ Except as provided in this subsection, when those
- 3 conditions exist the right to the recovery of compensation under this chapter shall
- 4 be the exclusive remedy against the employer, any other employee of the same
- 5 employer, and the worker's compensation insurance carrier. This section does not
- 6 limit the right of an employee to bring action against any coemployee for an assault

1 intended to cause bodily harm, or against a coemployee for negligent operation of a  
2 motor vehicle not owned or leased by the employer, against the employer or a  
3 coemployee for an unlawful employment practice under s. 103.08 (3), or against a  
4 coemployee of the same employer to the extent that there would be liability of a  
5 governmental unit to pay judgments against employees under a collective  
6 bargaining agreement or a local ordinance.

**History:** 1971 c. 148, 307, 324; 1975 c. 147 ss. 15, 54; 1977 c. 195, 272, 418; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1993 a. 49, 370, 490, 492; 2005 a. 172; 2007 a. 185.

7 **SECTION 2.** 102.80 (1) (dm) of the statutes is created to read:

8 102.80 (1) (dm) Amounts received under s. 103.08 (6) (a) 1.

**History:** 1989 a. 64; 1995 a. 117; 2003 a. 144; 2005 a. 172, 253, 410; 2007 a. 97.

9 **SECTION 3.** 102.81 (4g) of the statutes is created to read:

10 102.81 (4g) If an injured employee who received one or more payments under  
11 sub. (1) begins an action against the employee's employer or a coemployee under s.  
12 103.08 (3) for an unlawful employment practice arising out of the same underlying  
13 behavior as the behavior giving rise to the injury that is compensable under sub. (1),  
14 the injured employee shall provide to the department a copy of all papers filed by any  
15 party to the action. If the injured employee is awarded medical expenses, back pay,  
16 or front pay under in s. 103.08 (5) (a), the employer shall reimburse the department  
17 as provided in s. 103.08 (6) (a) 1.

18 **SECTION 4.** 102.81 (5) of the statutes is amended to read:

19 102.81 (5) The department of justice may bring an action to collect the payment  
20 under sub. (4) or (4g).

**History:** 1989 a. 64; 1995 a. 117; 2003 a. 144; 2005 a. 172, 253, 410; 2007 a. 97.

21 **SECTION 5.** 102.82 (1) of the statutes is amended to read:

22 102.82 (1) An uninsured employer shall reimburse the department for any  
23 payment made under s. 102.81 (1) to or on behalf of an employee of the uninsured

1 employer or to an employee's dependents and for any expenses paid by the  
 2 department in administering the claim of the employee or dependents, less amounts  
 3 repaid by the uninsured employer,<sup>✓</sup> employee, or dependents under s. 102.81 (4) (b)  
 4 or (4g).<sup>✓</sup> The reimbursement owed under this subsection is due within 30 days after  
 5 the date on which the department notifies the uninsured employer that the  
 6 reimbursement is owed. Interest shall accrue on amounts not paid when due at the  
 7 rate of 1% per month.

8 **History:** 1989 a. 64, 359; 1991 a. 85; 1993 a. 81<sup>✓</sup>; 1995 a. 27 s. 9130 (4); 1997 a. 3, 38; 2003 a. 144.

9 **SECTION 6.** 103.08 of the statutes is created to read:

10 **103.08 Abusive work environments.** (1) DEFINITIONS.<sup>✓</sup> In this<sup>✓</sup> section:

11 (a) "Abusive conduct"<sup>✓</sup> means conduct, including acts or omissions, by an  
 12 employer or employee, with malice, that a reasonable person would find to be hostile  
 13 based on the severity, nature, and frequency of the conduct.<sup>✓</sup> "Abusive conduct"  
 14 includes repeated infliction of verbal abuse such as derogatory remarks, insults, and  
 15 epithets;<sup>✓</sup> verbal or physical conduct that is threatening, intimidating, or  
 16 humiliating;<sup>✓</sup> sabotage or undermining of an employee's work performance;<sup>✓</sup> or  
 17 exploitation of an employee's known psychological or physical vulnerability.  
 18 "Abusive conduct"<sup>✓</sup> does not include a single act unless that act is especially severe  
 19 or egregious.<sup>✓</sup>

20 (b) "Abusive work environment"<sup>✓</sup> means a work environment in which an  
 21 employee is subjected to abusive conduct that is so severe that it causes tangible  
 22 harm to the employee.<sup>✓</sup>

23 (c) "Adverse employment action"<sup>✓</sup> means an action taken by an employer with  
 24 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<sup>ed</sup>

1 unfavorable transfer or reassignment, reduction in compensation, or denial of  
2 increased compensation. "Adverse employment action" also includes a constructive  
3 discharge.

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

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

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

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

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

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

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

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

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

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

7 1. Because the employee opposed an unlawful employment practice.

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

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

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

16 (3) CIVIL CAUSE OF ACTION. In addition to obtaining any other remedy provided  
17 by law, an employee who alleges that he or she has been injured by an unlawful  
18 employment practice may bring an action in circuit court against the employer or  
19 employee who allegedly engaged in the unlawful employment practice for such relief  
20 under sub. (5) as the court may consider appropriate. An action under this  
21 subsection shall be commenced within one year after the last act constituting the  
22 unlawful employment practice occurred or be barred.

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



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

3           2. The aggrieved employee ✓ unreasonably failed to take advantage of  
4 appropriate opportunities provided by the employer to prevent or correct that  
5 abusive conduct. ✓

6           (b) If the alleged unlawful employment practice resulted in an ✓ adverse  
7 employment action against the aggrieved employee, the employer may plead as an  
8 affirmative defense that the aggrieved employee's complaint is based on any of the  
9 following: ✓

10          1. An adverse employment action that was reasonably taken for poor  
11 performance, misconduct, or economic necessity. ✓

12          2. An adverse employment action that was taken in response to a reasonable  
13 performance evaluation. ✓

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

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

19          (5) RELIEF. ✓ (a) Subject to par. (b) ✓ and sub. (6) (a) 1., ✓ if the circuit court finds  
20 that an employer or employee has engaged in an unlawful employment practice, ✓ the  
21 court may enjoin the employer or employee from engaging in that practice and may  
22 grant such other relief as the court may consider appropriate, including  
23 reinstatement of the aggrieved employee, ✓ removal of the person who engaged in the  
24 abusive conduct giving rise to the unlawful employment practice from the aggrieved  
25 employee's work area, ✓ medical expenses, back pay, front pay, compensation for

1 emotional distress, punitive damages under s. 895.043, and reasonable costs and  
2 attorney fees. If the circuit court orders any payment under this paragraph because  
3 of an unlawful employment practice engaged in by an employee, the employer of the  
4 employee is liable for that payment.

5 (b) If an employer is found to have engaged in an unlawful employment practice  
6 that did not result in an adverse employment action against the aggrieved employee,  
7 the employer's liability for compensation for emotional distress may not exceed  
8 \$25,000 and the employer is not liable for punitive damages.

9 (6) EFFECT ON OTHER LAWS. (a) This section does not relieve any person from  
10 any duty, liability, or penalty provided by any other law except as follows:

11 1. If the worker's compensation insurer of an employer that is ordered to pay  
12 medical expenses under sub. (5) (a), the employer, if self-insured, or the department,  
13 if the employer is uninsured, has paid or is obligated to pay medical expenses under  
14 ch. 102 for an injury arising out of the same underlying behavior as the behavior  
15 giving rise to the unlawful employment practice for which the employer is liable, or  
16 if the worker's compensation insurer of an employer that is ordered to pay back pay  
17 or front pay under sub. (5) (a), the employer, if self-insured, or the department, if the  
18 employer is uninsured, has paid or is obligated to pay disability benefits under ch.  
19 102 for such an injury for the same period as back or front pay is awarded under sub.  
20 (5) (a), the court shall reduce the amount awarded under sub. (5) (a) for medical  
21 expenses, back pay, or front pay by the amount of those medical expenses or disability  
22 benefits that the insurer, employer, or department has paid or is obligated to pay  
23 under ch. 102. If the insurer or department has paid or is obligated to pay those  
24 medical expenses or disability benefits under ch. 102, the court shall order the  
25 employer to reimburse the insurer or department for the amount of those expenses

1 or benefits paid or for the amount awarded under sub. (5) (a) for medical expenses,  
2 back pay, or front pay, whichever is less.

3 2. If the aggrieved employee recovers medical expenses under sub. (5) (a) for  
4 an unlawful employment practice arising out of the same underlying behavior as the  
5 behavior giving rise to an injury that is compensable under ch. 102 or recovers back  
6 pay or front pay under sub. (5) (a) for such an unlawful employment practice for the  
7 same period as disability benefits are payable under ch. 102, the amount payable for  
8 medical expenses or disability benefits under ch. 102 for that injury shall be reduced  
9 by the amount recovered for medical expenses, back pay, or front pay under sub. (5)  
10 (a).

11 (b) An aggrieved employee who has claimed worker's compensation or  
12 payments under s. 102.81 (1) for an injury arising out of the same underlying  
13 behavior as the behavior giving rise to the unlawful employment practice for which  
14 the aggrieved employee brings an action under sub. (3) shall provide notice of the  
15 action and copies of all papers filed by a party to the action to the employer's worker's  
16 compensation insurer or, if the employer is uninsured, to the department and notice  
17 of the worker's compensation proceeding and copies of all papers filed by a party to  
18 the proceeding to the court and to all parties to the action.

19 SECTION 7. 814.04 (intro.) of the statutes, as affected by 2009 Wisconsin Act 20,  
20 is amended to read:

21 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)  
22 (b), 100.30 (5m), 103.08 (5) (a), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9),  
23 281.36 (2) (b) 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.443 (3),

1 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51  
2 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

**History:** Sup. Ct. Order, 50 Wis. 2d vii (1971); 1971 c. 141; Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254; 1999 a. 32, 82, 122, 190; 2001 a. 6, 16; 2003 a. 138; Sup. Ct. Order No. 03-06A, 2005 WI 86, 280 Wis. 2d xiii; 2005 a. 155, 325; 2005 a. 443 s. 265; 2005 a. 478; 2007 a. 96; 2009 a. 20.

3 **SECTION 8.** 893.997 of the statutes is created to read:

4 **893.997 Abusive work environment.** Any civil action arising under s.  
5 103.08 is subject to the limitations of s. 103.08 (3).

6 **SECTION 9. Initial applicability.**

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

10 (END)

**Parisi, Lori**

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**From:** Packnett, Greg  
**Sent:** Tuesday, March 23, 2010 11:51 AM  
**To:** LRB.Legal  
**Subject:** Jacket for LRB 3738

Please jacket LRB 3738/1 for introduction.

Thank you,  
Greg Packnett  
Office of Rep. Kelda Helen Roys