

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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April 5, 2010

Representative Roys:

This amendment deletes all references in the bill to worker's compensation. As a result, the bill does not explicitly exempt a claim under the bill for abusive work environment from the exclusive remedy provision of the worker's compensation law. Nevertheless, a court could still hold as the Wisconsin Supreme Court did in *Byers v. LIRC*, 208 Wis. 2d 388 (1997), with respect to a claim for sexual harassment that the exclusive remedy provision of the worker's compensation law does not apply to a claim under the bill because, as in *Byers*, the purposes of the worker's compensation law and this bill are different.

Specifically, in *Byers* the court held that the purpose of the worker's compensation law is to compensate "persons who suffer work-related physical and mental injuries," *Id.* at p. 395, while the fair employment law is "concerned with deterring and remedying intangible injuries which rob a person of dignity and self-esteem and with eliminating a discriminatory environment in the workplace that affects not only the victim of discrimination but the entire workforce and the public welfare." *Id.* at p. 397. As such, "in interpreting the two statutes, it is the court's duty to harmonize them in a way that will give effect to the legislature's intent in enacting both statutes." *Id.* at p. 395.

Similarly, the purpose of 2009 AB-894 is to deter and remedy abusive work environments that rob a person of dignity and self-esteem and that affect not only the victim but the entire workforce and the public welfare. So, in following the precedent of *Byers*, a court's duty would be to harmonize the worker's compensation law and the abusive work environment law in a way that will give effect to both laws by holding that the exclusive remedy provision of the worker's compensation law does not bar a claim under the abusive work environment law.

If you have any questions, please do not hesitate to contact me directly at the phone number or e-mail address captioned below.

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