

2009 DRAFTING REQUEST

Assembly Amendment (AA-AB894)

Received: 04/03/2010

Received By: gmalaise

Wanted: As time permits

Companion to LRB:

For: Kelda Helen Roys (608) 266-5340

By/Representing: Emily Williams

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:

Pre Topic:

No specific pre topic given

Topic:

Remedies for abusive work environment; deletion of worker's compensation exclusive remedy and offset

Instructions:

Delete references to worker's compensation, i.e., exclusive remedy exception and offset against worker's compensation recovery as in Byers v. LIRC, 208 wis. 2d 388 (1997)

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>
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FE Sent For:

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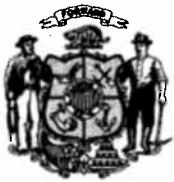
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FE Sent For:

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa2001/7

GMM ~~WA~~...

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jld

ASSEMBLY AMENDMENT,
TO 2009 ASSEMBLY BILL 894

DN of E

- 1 At the locations indicated, amend the bill as follows: ✓
- 2 **1.** Page 3, line 1: delete the material beginning with that line and ending with ✓
- 3 page 5, line 9. ✓
- 4 **2.** Page 8, line 22: delete "and sub. (6) (a) 1." ✓
- 5 **3.** Page 9, line 12: delete the material beginning with that line and ending with ✓
- 6 page 10, line 21. ✓

7 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2001/1dn

GMM: A:...

date

Jld

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.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2001/1dn
GMM:jld:ph

April 5, 2010

Representative Roys:

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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.

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