

1993 Assembly Bill 982

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1993 WISCONSIN ACT 427

AN ACT *to amend* 111.32 (13) and 111.36 (1) (b); and *to create* 111.36 (1) (br) and 111.36 (3) of the statutes, **relating to:** the definition of sexual harassment and sexual harassment prohibited under the fair employment law.

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

PREFATORY NOTE: This bill was developed by the legislative council's special committee on sexual harassment. The provisions of the bill are explained in the NOTES following each SECTION.

SECTION 1. 111.32 (13) of the statutes is amended to read:

111.32 (13) "Sexual harassment" means unwelcome sexual advances, unwelcome requests for sexual favors, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. "Sexual harassment" includes conduct directed by a person at another person of the same or opposite gender. "Unwelcome verbal or physical conduct of a sexual nature" includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments, ~~or of a sexual nature;~~ the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes; or deliberate verbal or physical conduct of a sexual nature, whether or not repeated, that is sufficiently severe to interfere substantially with an employe's work performance or to create an intimidating, hostile or offensive work environment.

NOTE: Amends the definition of sexual harassment in the fair employment law to expressly include:

1. Unwelcome requests for sexual favors.
2. Conduct directed at a person of the same or opposite gender as the harasser.
3. Deliberate verbal or physical conduct of a sexual nature, whether or not repeated, that is sufficiently severe to create a hostile work environment.

SECTION 2. 111.36 (1) (b) of the statutes is amended to read:

111.36 (1) (b) Engaging in sexual harassment; or implicitly or explicitly making or permitting acquiescence in or submission to sexual harassment a term or condition of employment; or making or permitting acquiescence in, submission to or rejection of sexual harassment the basis or any part of the basis for any employment decision affecting an employe, other than an employment decision that is disciplinary action against an employe for engaging in sexual harassment in violation of this paragraph; or permitting sexual harassment to have the purpose or effect of substantially interfere interfering with an employe's work performance or ~~to create~~ of creating an intimidating, hostile or offensive work environment. Under this paragraph, ~~an employer, labor organization, employment agency or licensing agency is presumed liable for an act of sexual harassment by that employer, labor organization, employment agency or licensing agency or by any of its employes or members, if the act occurs while the complaining employe is at his or her place of employment or is performing duties relating to his or her employment, if the complaining employe informs the employer, labor organization, employment agency or licensing agency of the act, and if the employer, labor organization, employment agency or licensing agency fails to take appropriate action within a reasonable time~~ substantial interference with an employe's work performance or creation of an intimidating, hostile or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employe would consider the con-

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duct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment.

NOTE: 1. Specifies that either of the following constitutes employment discrimination in the form of sexual harassment:

a. Making or permitting acquiescence in, submission to or rejection of sexual harassment the basis or any part of the basis for an employment decision affecting an employe. The prohibition against this form of sexual harassment does not restrict an employer from taking disciplinary action against an employe for engaging in sexual harassment.

b. Permitting sexual harassment to have the purpose or effect of creating a hostile work environment.

2. Specifies a reasonable person test to determine whether sexual harassment substantially interferes with work performance or creates a hostile work environment. The test is whether the conduct is such that a reasonable person under the same circumstances as the employe would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment. The special committee on sexual harassment concluded that, in applying this test, the trier of fact should consider the victim's circumstances and not notions of acceptable behavior based on stereotype or on the history of behavior in the employer's workplace. Circumstances to be considered may include factors such as the victim's age, gender, background, employment status and the general context in which the alleged harassment took place.

SECTION 2m. 111.36 (1) (br) of the statutes is created to read:

111.36 (1) (br) Engaging in harassment that consists of unwelcome verbal or physical conduct directed at another individual because of that individual's gender, other than the conduct described in par. (b), and that has the purpose or effect of creating an intimidating, hostile or offensive work environment or has the purpose or

effect of substantially interfering with that individual's work performance. Under this paragraph, substantial interference with an employe's work performance or creation of an intimidating, hostile or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employe would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment.

SECTION 3. 111.36 (3) of the statutes is created to read:

111.36 (3) For purposes of sexual harassment claims under sub. (1) (b), an employer, labor organization, employment agency or licensing agency is presumed liable for an act of sexual harassment by that employer, labor organization, employment agency or licensing agency or by any of its employes or members, if the act occurs while the complaining employe is at his or her place of employment or is performing duties relating to his or her employment, if the complaining employe informs the employer, labor organization, employment agency or licensing agency of the act, and if the employer, labor organization, employment agency or licensing agency fails to take appropriate action within a reasonable time.

NOTE: 2. Recreates a current provision relating to presumed liability on the part of an employer, labor organization, employment agency or licensing agency for acts of sexual harassment on the part of their employes or members if the complaining employe informs the appropriate person of the harassment and appropriate action is not taken within a reasonable time. This provision was deleted from current s. 111.36 (1) (b), stats., in SECTION 2 of the bill.