

How the Workplace Psychological Safety Act works

Finally — a way to curb misuse of power and control that violates workers' right to psychological safety

Workplace bullying and mobbing are forms of **psychological harassment and psychological abuse** that violate an employee's inherent basic human right to dignity: severe or pervasive infliction of hostile and unethical words and/or actions, intentional or unintentional, direct or indirect, or omissions, directed in a targeted and/or systematic manner that creates a hostile work environment that is offensive and a reasonable person would find unsuitable to perform their regular duties and tasks. A single severe incident of such behavior may also constitute psychological harassment and psychological abuse.

Workplace psychological harassment and psychological abuse are issues of employee exploitation. Employers are not explicitly liable for the psychological harm of their employees — nor do they want to be. At its root cause is avoidance of employer liability. The status quo, employers are negatively incentivized to address the issue even if they claim to value safe workplaces. Employers **choose** to avoid a perceived threat of liability over human well-being.

The Workplace Psychological Safety Act (WPSA) takes that choice away and provides a cause of action for employees who suffer from workplace psychological harassment and/or psychological abuse.

THE WHY BEHIND THE BILL

- 1 There is no current law that protects workers from workplace psychological harassment and/or psychological abuse.** Unless you're a member of a protected class (sex, race, age, etc.) under the Title VII of the Civil Rights Act — and can prove the abuse is from your protected class membership — you don't have rights to psychological safety at work under law. Intentional Infliction of Emotional Distress (IIED) law requires victims to not only prove the abuser's intent but also to show severe emotional distress, a near impossible threshold to prove.
- 2 Proving intent doesn't work with anti-discrimination law — and it won't work with mistreatment in general.** Anti-discrimination law used to work when it focused on impact. The courts' shift in the 1980s to a focus on intent has rendered anti-discrimination law nearly useless. It's no secret it's an epic failure. The WPSA does not require victims to prove their abuser's intent, so it would strengthen protections for women and non-white workers who can prove discriminatory impact but not intent.
- 3 Workplace psychological harassment and psychological abuse is an organizational problem, not an individual one.** Courts treat anti-discrimination law, which psychological harassment and psychological abuse overlaps with, as an individual problem. But it's a systemic problem often rooted in negative stereotypes and threats to power and control. The WPSA focuses on both individual recourse AND collective recourse to address the problem at the root: with employers. Employers control the work environment.
- 4 Oftentimes, employers don't enforce their own policies or practice what they preach around training — and even retaliate against those who report abuse.** There is no law stating employers have to follow their own policies. Tennessee passed a bill incentivizing workplace anti-abuse policies, and California passed a training-only bill. Neither are effective. Policy and training laws don't work. In addition, workers compensation laws don't recognize hostile work environments or psychological injury. They are employer-controlled and require employees to waive their right to sue. Employers know there are loopholes in the law. The bill will fill those loopholes.
- 5 Employers need accountability to make our workplaces psychologically safe.** The WPSA creates an accountable incentive for employers to actually prevent and address workplace psychological harassment and psychological abuse. The WPSA requires employers to do what's right — and requires the public reporting of attrition rates and law violations to get in front of the health and economic harm to targeted and victimized employees before it can occur.
- 6 We can prevent harm of any kind.** No law will eradicate an issue, but the goal is to prevent workplace psychological harassment and psychological abuse as much as possible. Prevention means not waiting until harm occurs (not just psychological or physical harm). Sexual harassment law acknowledges a hostile work environment is enough for legal recourse. The WPSA sets its baseline for a legal claim at a hostile work environment, consistent with sexual harassment law.
- 7 A legal remedy must be affordable for all workers.** Our legislators designed our pay-to-play legal system to favor those who can afford lawyers. We must do better. As with regulations for other harms, we must also put money toward this problem if we want to fix it. Making abuse illegal regardless of protected class status (giving more protections to members of protected classes) would lessen the EEOC and state agency backlogs and lessen the burden on the courts. The WPSA would ensure that everyone, especially our most vulnerable, low-wage workers, can access a remedy while still providing for a private action.

