

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 188

S.P. 63

In Senate, January 27, 2015

### An Act To Protect Employees from Abusive Work Environments

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator PATRICK of Oxford.

Cosponsored by Representative PETERSON of Rumford and

Senators: DUTREMBLE of York, GERZOFSKY of Cumberland, MILLETT of Cumberland,

Representatives: BATES of Westbrook, CHENETTE of Saco, HAMANN of South Portland,  
MASTRACCIO of Sanford.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA c. 7, sub-c. 12** is enacted to read:

3 **SUBCHAPTER 12**

4 **PROTECTION FROM ABUSIVE WORK ENVIRONMENTS**

5 **§879. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following  
7 terms have the following meanings.

8 **1. Abusive conduct.** "Abusive conduct" means acts or omissions or both that a  
9 reasonable person would find abusive, based on their severity, nature or frequency.  
10 "Abusive conduct" includes, but is not limited to: repeated verbal abuse involving the use  
11 of derogatory remarks, insults and epithets; verbal, nonverbal or physical conduct of a  
12 threatening, intimidating or humiliating nature; and the sabotaging or undermining of an  
13 employee's work performance. A single act or omission does not constitute abusive  
14 conduct, unless so severe and egregious that a reasonable person would find it abusive.

15 **2. Abusive work environment.** "Abusive work environment" means a work  
16 environment in which an employer or one or more of its employees, acting with intent to  
17 cause pain or distress to an employee, subjects that employee to abusive conduct that  
18 causes physical harm, psychological harm or both.

19 **3. Adverse employment action.** "Adverse employment action" means a  
20 termination, constructive discharge, demotion, unfavorable reassignment, failure to  
21 promote, disciplinary action, reduction in compensation or other action adverse to an  
22 employee's employment status.

23 **4. Constructive discharge.** "Constructive discharge" means a termination of  
24 employment by resignation under the following circumstances:

25 A. The employee reasonably believed that the employee was subjected to an abusive  
26 work environment;

27 B. The employee resigned because of that abusive work environment; and

28 C. The employer was aware of the abusive conduct prior to the resignation and failed  
29 to stop it.

30 **5. Physical harm.** "Physical harm" means the impairment of a person's physical  
31 health or bodily integrity, as established by competent evidence.

32 **6. Psychological harm.** "Psychological harm" means the impairment of a person's  
33 mental health, as established by competent evidence.

1           **§880. Unlawful employment practices**

2           **1. Abusive work environment.** A person may not subject an employee to an  
3           abusive work environment.

4           **2. Retaliation.** A person may not retaliate in any manner against an employee who  
5           has taken reasonable action to stop or contest a violation of subsection 1 or who has made  
6           a charge, testified, assisted or participated in any manner in an investigation or  
7           proceeding under this subchapter, including, but not limited to, internal complaints and  
8           proceedings, arbitration and mediation proceedings and legal actions.

9           **§880-A. Employer liability and defense**

10          **1. Employer liability.** An employer may be individually liable for direct actions in  
11          violation of section 880 and is vicariously liable for a violation of section 880 by an  
12          employee of that employer.

13          **2. Employer defense.** If an alleged violation of section 880 does not result in an  
14          adverse employment action, it is an affirmative defense to liability under subsection 1 if  
15          the employer:

16                **A.** Exercised reasonable care to prevent and promptly correct any abusive conduct or  
17                abusive work environment; and

18                **B.** Provided appropriate preventive or corrective opportunities and the complainant  
19                employee unreasonably failed to take advantage of those opportunities.

20          **§880-B. Employee liability and defense**

21          **1. Employee liability.** An employee may be individually liable for a violation of  
22          section 880.

23          **2. Employee defense.** It is an affirmative defense for an employee if the employee  
24          violated section 880 at the direction of the employer under actual or implied threat of an  
25          adverse employment action.

26          **§880-C. Affirmative defenses**

27          **1. Affirmative defenses.** It is an affirmative defense to any action brought under  
28          this subchapter that:

29                **A.** The complaint is based on an adverse employment action reasonably made for  
30                poor performance, misconduct or economic necessity;

31                **B.** The complaint is based on a reasonable performance evaluation; or

32                **C.** The complaint is based on an employer's reasonable investigation about  
33                potentially illegal or unethical activity.

34          **§880-D. Relief**

35          **1. Relief generally.** If a person is found liable for a violation of this subchapter, the  
36          court may enjoin the defendant from engaging in any activity related to the violation and

1 may order any other relief the court determines is appropriate, including, but not limited  
2 to, reinstatement of employment, removal of the offending party from the complainant's  
3 work environment, back pay, front pay, medical expenses, compensation for pain and  
4 suffering, compensation for emotional distress, punitive damages and attorney's fees.

5 **2. Limitations on employer liability.** When an employer is liable for a violation of  
6 this subchapter that did not include an adverse employment action, emotional distress  
7 damages and punitive damages may be awarded only if the court finds the actionable  
8 conduct was extreme. This limitation does not apply to individually named employee  
9 defendants.

10 **3. Aggravating factor.** In any action brought under this subchapter, the court shall  
11 consider it to be an aggravating factor that the conduct constituting a violation of this  
12 subchapter exploited an employee's known psychological or physical illness or disability.

### 13 **§880-E. Procedures**

14 **1. Private right of action.** This subchapter may be enforced solely by a private  
15 right of action.

16 **2. Time limitations.** An action under this subchapter must be commenced no later  
17 than one year after the last act that constitutes a violation of this subchapter.

### 18 **§880-F. Effect on other legal relationships**

19 **1. Collective bargaining.** This subchapter does not supersede rights and obligations  
20 provided under collective bargaining laws, rules and regulations.

21 **2. Nonlimitation of remedy.** The remedies provided in this subchapter are in  
22 addition to any remedies provided under any other law, and nothing in this subchapter  
23 relieves any person from any liability, duty, penalty or punishment provided by any other  
24 law, except as provided by subsection 3.

25 **3. Workers' compensation.** If an employee receives workers' compensation  
26 benefits for medical costs for the same physical harm or psychological harm pursuant to  
27 both this subchapter and Title 39-A or compensation under both this subchapter and Title  
28 39-A in cash payments for the same period of time of the employee's not working as a  
29 result of the compensable physical harm or psychological harm resulting from a violation  
30 of this subchapter, the court must order the payments of workers' compensation benefits  
31 to be reimbursed from compensation paid under this subchapter.

## 32 **SUMMARY**

33 This bill provides legal relief for employees who have been harmed psychologically,  
34 physically or economically by exposure to abusive work environments. Employees and  
35 employers who subject an employee to an abusive work environment are liable, and  
36 employers are vicariously liable for the abusive workplace conduct of their employees, in  
37 a private civil action brought by the affected employee. The legal remedies made  
38 available by this bill do not limit any other legal rights of an individual, except that

1 workers' compensation benefits received under the Maine Revised Statutes, Title 39-A for  
2 the same injury or illness must be reimbursed from compensation that is earned through  
3 the legal remedies made available by this bill.