

## Abusive Work Environment Proposed Legislation Introduced In Minnesota

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Earlier this week, proposed legislation was introduced in the Minnesota State Senate aimed at making abusive conduct in the workplace illegal and holding both employees and employers accountable. This proposed legislation would be in addition to existing Minnesota laws which prohibit discrimination and retaliation in the workplace. According to [S.F. No. 1932](#), an employer would be held vicariously liable if an employee subjects another employee to “an abusive work environment.” The employee could escape individual liability if he or she can demonstrate the employee acted under the direction of the employer and under a threat of an adverse employment action (e.g., demotion or termination). The employer can raise an affirmative defense similar to an *Ellerth/Faragher* defense in harassment claims, namely: (1) the employer took reasonable steps to prevent and promptly correct the behavior; and (2) the complaining employee unreasonably failed to take advantage of the employer’s preventative or corrective opportunities. Additional affirmative defenses include the complaint is based on any of the following: (1) an adverse employment action reasonably made for poor performance, misconduct or economic necessity; (2) a reasonable performance evaluation; or (3) a defendant’s reasonable investigation about potentially illegal or unethical activity. The proposed legislation defines “abusive conduct” as being “conduct, including acts and omissions, that a reasonable person would find hostile, based on the severity, nature and frequency of the conduct.” The definition continues with various examples of abusive conduct to include:

- Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults or epithets;
- Verbal or physical conduct of a threatening, intimidating, or humiliating nature;
- The sabotage or undermining of an employee’s work performance; or
- Attempts to exploit an employee’s known psychological or physical vulnerability.

The proposed legislation also declares an “abusive work environment” as an environment in which either the employee or employer acts with malice to subject an employee to abusive conduct (as defined) “so severe that it causes tangible harm to the employee.” It also includes language regarding constructive discharge as being a possible adverse employment action. Finally, S.F. No. 1932 does not provide for any governmental oversight and, instead, the enforcement mechanism available is only through a private cause of action. The proposed remedies for a violation of this proposed legislation could include reinstatement, removal of the offending employee from the work environment, back pay, front pay and medical expenses. In the event an adverse employment action occurred and the conduct was “severe and egregious,” the remedies solely against employers also could include

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