



Tennessee Employers Get Bullying Lawsuit Safe Harbor

Insights

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Tennessee employers who want to avoid workplace-bullying lawsuits need only adopt the state's model anti-bullying policy and they will enjoy immunity from such claims, thanks to a new law just signed into effect yesterday. Thanks to H.B. 856, an expansion of the Healthy Workplace Act, private employers can now take advantage of the law to shield themselves from troublesome legal claims spurred by allegations of workplace bullying. What should Tennessee employers do in order to capitalize on this new law?

The New Law, In A Nutshell

The bill – passed unanimously by both the state House and Senate and signed into effect by Governor Bill Lee – is only a few lines long, but its impact is profound. The new law simply extends the same immunity that had existed for public employers since 2014 to the private sector.

Tennessee employers are currently exposed to state court lawsuits alleging “infliction of mental anguish based on its employees’ abusive conduct” if a worker believes they have been the victim of bullying. However, under the new law, an employer can receive legal immunity if they adopt the model policy created by the Tennessee Advisory Commission on Intergovernmental Relations.

The Model Policy

The model policy has eight main components:

- **Statement of Commitment, Values, and Purpose** – The first section should provide an overall statement of intent for desired workplace behavior among your employees, letting them know that they have the right to be treated with dignity and respect at all times.
- **Definition of Abusive Conduct** – Lifting suggested language from existing state law, the model policy next defines the kind of workplace conduct that is prohibited by your organization. Generally, “abusive conduct” includes acts or omissions that would cause a reasonable person, based on the severity, nature, and frequency of the conduct, to believe that an employee was subject to an abusive work environment. This can include, but is not limited to:
 - Repeated verbal abuse in the workplace, including derogatory remarks, insults, and epithets;
 - Verbal, nonverbal, or physical conduct of a threatening, intimidating, or humiliating nature in the workplace; or
 - The sabotage or undermining of an employee’s work performance in the workplace.

The policy should also include a description of conduct that does not amount to “abusive conduct,” including disciplinary procedures in accordance with your adopted policies, routine coaching and counseling (including feedback about and correction of work performance), reasonable work assignments, individual differences in styles of personal expression, “passionate or loud expression” with no intent to harm others, differences of opinion on work-related concerns, and the non-abusive exercise of managerial prerogative.

- **Employer Responsibility** – The next section should specify your responsibilities, including expectations of your supervisors to provide a safe and respectful work environment, and ensuring that all employees have access to and are aware of the policy.
- **Employee Responsibility** – At the same time, your policy should also outline the responsibility held by your employees (including witnesses to unprofessional conduct). You should inform them that you have an expectation that they will treat each other with dignity and respect, and should cooperate with preventive measures put in place by your supervisors.
- **Retaliation** – Your policy should make clear that retaliation – defined as any act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against anyone exercising rights under this policy – is prohibited and will not be tolerated.
- **Training for Supervisors and Employees** – The policy encourages supervisors and employees to participate in training on the policy, which should identify factors that contribute to a respectful workplace, familiarize participants with responsibilities under the policy, and provide steps to address an abusive conduct incident.
- **Complaint Process** – One of the key features of any anti-bullying policy includes a well-constructed complaint process, describing (a) the actual process for reporting complaints; (b) the procedures for an effective investigation; (c) the resulting actions for the various parties involved. To avoid confusion, the new law notes that this section needs to mirror existing disciplinary processes.
- **Confidentiality** – The final section of the model policy should note that you will maintain confidentiality of each party involved in an abusive conduct investigation to the extent possible, provided it does not interfere with your ability to effectively investigate the matter or otherwise take corrective action.

What Should Tennessee Employers Do Now?

The new law is effective immediately, so you should make it a priority to take action right away. We recommend that you work with your labor and employment counsel as soon as possible to update your handbook policies and adopt a compliant model policy that will provide you with the immunity that the law now offers you. This is true even if your current handbook contains an anti-bullying policy; it should be modified to comply with the new law. This policy, of course, should be complementary with your existing written anti-harassment policy, which should address all forms of unlawful harassment as defined under federal and Tennessee law and provide an effective

complaint procedure. This might also be a good time for a general refresh of your entire handbook, so you may consider having all of your policies reviewed.

Note that the statutory immunity only applies to general abusive conduct litigation filed in Tennessee state court. Nothing about this law prevents you from being hit with a lawsuit alleging mistreatment based on race, gender, or any other federally protected class. For this reason, you need to educate your supervisors that this new law provides a nice shield from certain kinds of cases, but doesn't immunize your organization – or them – from many other kinds of cases that can spring from ineffective leadership or poor human resources practices.

If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Memphis office](#).

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