

Report of the Tennessee Advisory Commission on Intergovernmental Relations

Model Abusive Conduct Prevention Policy
Pursuant to Public Chapter 997, the Healthy Workplace Act

Contents

ENCOURAGING SAFE AND CIVIL PUBLIC WORKPLACES	1
Other States’ Efforts and Model Policies	3
Efforts within Tennessee	4
Local Governments.....	4
School Systems	4
Higher Education.....	5
Relationship to Existing Laws and Implementation Questions.....	5
Not a New Cause of Action	6
Enhanced Immunity.....	6
All Government Entities Affected	7
Adoption Process a Matter of Local Law	7
Development of the Policy	8
Relationship to other policies and practices	8
Adopting an Abusive Conduct Prevention Policy—Implementation Issues.....	9
Variation in Government Size and Structure	10
Organizational Culture.....	10
Training	11
Statutory Placement of Healthy Workplace Laws	11
MODEL ABUSIVE CONDUCT PREVENTION POLICY pursuant to Public Chapter 997, the Healthy Workplace Act	13
Statement of Commitment, Values, and Purpose.....	13
Definition of Abusive Conduct.....	13
Employer Responsibility	14

Employee Responsibility (including witnesses)	15
Retaliation	15
Training for Supervisors and Employees.....	15
Complaint Process	16
Reporting	16
Investigation.....	16
Corrective Action.....	16
Confidentiality	17
References	18
Persons Contacted or Interviewed	20
Appendix A: Public Chapter 997	2
Appendix B: Opinion of the Attorney General, 15-01	5
Appendix C: Workgroup Members	14
Appendix D: Resources	15
Examples of Acceptable and Unacceptable Abusive Conduct Prevention Behaviors	15
(From Partners for Health)	15
(From Civility Partners, LLC)	15
Publications and On-line Resources on Abusive Conduct (selected).....	17
Organizations	17
International Resources:.....	18

ENCOURAGING SAFE AND CIVIL PUBLIC WORKPLACES¹

Abusive conduct in the workplace can cause decreased productivity, employee absenteeism, and may lead to more violent behavior. The Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, notes that

it is widely agreed that violence at work is underreported, particularly since most violent or threatening behavior—including verbal violence (e.g., threats, verbal abuse, hostility, harassment) and other forms such as stalking—may not be reported until it reaches the point of actual physical assault or other disruptive workplace behavior.²

The 108th General Assembly passed Public Chapter 997, Acts of 2014, “the Healthy Workplace Act,” to address abusive conduct in state, county, and city government workplaces. See appendix A. The legislation requires the Commission by March 1, 2015, to create an optional model policy for state and local government employers to prevent such conduct in the workplace. The Act provides that any government entity that adopts this policy or one that conforms to the requirements set out in Tennessee Code Annotated, Section 50-1-503(b), is immune from suit for any employee's abusive conduct that results in negligent or intentional infliction of mental anguish. To obtain immunity under this new law, the policy must do two things as set forth in the referenced subsection:

1. Assist employers in recognizing and responding to abusive conduct in the workplace; and
2. Prevent retaliation against any employee who has reported abusive conduct in the workplace.

The Act defines abusive conduct as “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, which 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.”

¹ The content of this report was derived from several sources. The Workplace Bullying Institute and Civility Partners, LLC both permitted use of their materials at no cost to the State of Tennessee.

² Department of Health and Human Services, 2004. 5.

The movement to officially address abusive conduct in the workplace feels new in Tennessee's public sector but has its roots in an international movement started in Europe in the 1980s. According to David Yamada, Professor of Law at Suffolk University Law School in Boston and considered one of America's experts on workplace bullying, most researchers credit the late Swedish psychologist Heinz Leymann with framing the concept of workplace bullying.³ Scientists had studied occurrences of children ganging up on a single child and in the 1980s, Leymann began to focus on the same kinds of behaviors in adults. Leymann's research resulted in a Swedish national fund established for the purposes of expanding psychological research and the passing of a new "work environment law" in that country. Sweden, Great Britain, France, Australia, Ireland, and Canada all have passed laws to prohibit workplace bullying, harassment, violence, and victimization but address the issue in various ways. France, for example, has a law that provides protections for private sector employees but does little to help their civil servant workforce. Canada, in contrast, has an anti-bullying policy for their federal workers but has left it to their provinces to develop anti-bullying legislation.⁴

The workplace bullying movement reached the United States in the mid to late 1990s and has been widely promoted by Drs. Gary Namie and Ruth Namie, two Washington State psychologists. The Namies launched their first website campaign in 1997, which has since evolved into the Workplace Bullying Institute.⁵ In 2000, David Yamada published a law review article examining legal remedies for workplace bullying and shortly after teamed up with the Namies to produce and advocate for new model legislation combating workplace bullying. In 2004, the first healthy workplace bill was drafted, and thus began the campaign to bring workplace bullying into the realm of the law.⁶ Tennessee's Healthy Workplace Act is a variation of this model healthy workplace bill promoted by the Workplace Bullying Institute.

Other individuals and organizations also have worked toward preventing abusive conduct in American workplaces including the Civility Partners LLC⁷ and the National Workplace Bullying Coalition, which describes itself as a "multi-disciplined group of individuals from New Jersey, Pennsylvania, California, New York, Florida, and Nevada dedicated to the adoption of multiple approaches that both deter workplace bullying and provide a remedy to targeted individuals."⁸

³ Other terms are sometimes used to denote abusive conduct including workplace bullying, mobbing, and harassment.

⁴ Yamada, 2010. 254.

⁵ <http://www.workplacebullying.org/>

⁶ Ibid, 255.

⁷ <http://civilitypartners.com/>

⁸ <http://www.workplacebullyingcoalition.org/>

Other States' Efforts and Model Policies

As of 2014, the Healthy Workplace Bill had been introduced in twenty-six states and two territories.⁹ The legislation itself has not been widely adopted but has raised awareness of the issue. Several state and local governments have taken steps through non-legislative means to educate employees about abusive conduct in the workplace and prevent its occurrence. Here are some examples:

- The State of California passed legislation in 2014 that requires all state supervisors in agencies with 50 or more employees to receive training on abusive conduct prevention as part of other training on harassment.¹⁰
- Representatives of Massachusetts' executive branch agencies have been working together to develop a workplace bullying policy. They sought input from all employees to develop a definition and are awaiting final approval of their recommendation to revise existing policies.¹¹
- The Washington State Department of Labor and Industries provides a website for all employers entitled "Workplace Bullying and Disruptive Behavior: What Everyone Needs to Know."¹²
- In 2012, the Kansas Adjutant General established a human resources policy on workplace bullying.¹³
- The University of Missouri has created a set of resources and guidelines for improving civility on college campuses.¹⁴

Some local governments in other states also have adopted workplace bullying policies, such as Fulton County, Georgia,¹⁵ and Pima County, Arizona.¹⁶

⁹ California, Connecticut, Florida, Hawaii, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, Puerto Rico, US Virgin Islands.
www.healthyworkplacebill.org/states.php.

¹⁰ California Public Acts, Chapter 306, 2014.

¹¹ E-mail from Sandra Borders, Director of Diversity and Equal Opportunity, Commonwealth of Massachusetts, December 29, 2014.

¹² See <http://www.lni.wa.gov/Safety/Research/Workplacebullying/Default.asp>.

¹³ http://kansastag.gov/AdvHTML_Upload/files/Wrkplace%20Bullying.pdf

¹⁴ <http://civility.missouri.edu/toolbox.php>.

¹⁵ http://www.fultoncountyga.gov/images/stories/2013News/Resolutions/WP_Bullying_R.pdf.

¹⁶ <http://webcms.pima.gov/cms/one.aspx?portalId=169&pageId=1183>

Efforts within Tennessee

Local Governments

Even before passage of Public Chapter 997, some of Tennessee's local governments had taken steps to address abusive conduct in their workplaces. The City of Jackson passed an anti-bullying policy in March 2014. The City of Collierville's Board of Mayor and Aldermen passed a policy on workplace bullying on October 13, 2014. The City of Franklin is developing a workplace bullying policy.¹⁷ The City of Brentwood has not passed a specific anti-bullying policy, but its general workplace harassment policy contains language that is similar to policies on abusive conduct, defining workplace harassment as

any unwelcomed verbal, written or physical conduct that either degrades or shows hostility or aversion towards a person that (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an employee's work performance; or (3) affects an employee's employment opportunities or compensation.¹⁸

School Systems

In part because of recent efforts to address bullying in school settings, Tennessee's school systems already have policies that seek to prevent abusive conduct in schools. Tennessee Code Annotated, Section 49-6-4503, requires each school district to adopt a policy prohibiting harassment, intimidation, bullying, or cyber-bullying. Pursuant to this law, the Tennessee School Boards Association developed a model policy that school systems may use to develop their own policies. The model policy's title indicates that it is geared toward students, but the policy's text states that it covers "employees, employees' behaviors, students and students' behaviors . . ."¹⁹ In developing their policies, school systems are encouraged to consult with parents and guardians, school employees, volunteers, students, administrators, and community. The model policy states that

The _____ Board of Education has determined that a safe, civil, and supportive environment in school is necessary for students to learn and achieve high academic standards. In order to maintain that environment, acts of bullying, cyber-bullying, discrimination, harassment, hazing or any other victimization of students, based on any actual or perceived traits or characteristics are prohibited.

¹⁷ E-mail from Chris Clausi, Assistant Director of Human Resources, City of Franklin.

¹⁸ City of Brentwood Personnel Rules and Regulations, Section G.

¹⁹ Tennessee School Boards Association, 1.

This policy shall be disseminated annually to all school staff, students, and parents. This policy shall cover employees, employees' behaviors, students and students' behaviors while on school property, at any school-sponsored activity, on school-provided equipment or transportation or at any official school bus stop. If the act takes place off school property or outside of a school-sponsored activity, this policy is in effect if the conduct is directed specifically at a student or students and has the effect of creating a hostile educational environment or otherwise creating a substantial disruption to the education environment or learning process.²⁰

Both the law and the policy are directed at student behavior, but by including employees and employees' behaviors in the policy, local school boards may already have policies that could be slightly changed to comply with the requirements of Public Chapter 997.

In 2010, the Tennessee General Assembly passed Public Chapter 916, the "Teacher Code of Ethics," that amended Tennessee Code Annotated, Sections 49-5-1001 through 49-5-1004. This legislation contains several directives that address teachers' interactions with students, but also addresses teachers' obligations to other teachers, including "an educator shall not. . . knowingly make false or malicious statements about a colleague."

Higher Education

Tennessee's two higher education systems, the Board of Regents and the University of Tennessee, each have policies addressing treatment of employees, some of which already include elements of the model abusive conduct policy. The University of Tennessee, for example, has a code of conduct that includes sections on respecting others and examples of prohibited conduct.²¹ Board of Regents officials also indicate that they believe some existing policies could be revised to comply with Public Chapter 997. Both systems indicate that individual campuses have their own policies that would need to be considered.

Relationship to Existing Laws and Implementation Questions

House Bill 1981 and its companion, Senate Bill 2226, which became Public Chapter 997, originally addressed both private and public employers but was amended to apply only to Tennessee's state and local government workplaces. Because the state and local governments already have constitutional and statutory protections against legal claims that private employers do not have, the legislation raised some specific questions including whether it created a new cause of action against employers or employees, how it relates to existing immunity and sovereignty clauses, what entities are affected, and how an abusive conduct

²⁰ Ibid.

²¹ See http://policy.tennessee.edu/hr_policy/hros80/.

prevention policy would actually be approved. The Commission's chairman posed these questions to the Attorney General, who responded in Opinion 15-01 dated January 6, 2015. See appendix B.

Not a New Cause of Action

In response to questions whether Public Chapter 997 creates a new cause of action against state or local government employers or employees for abusive conduct in the workplace, the Attorney General opined that it does not. The opinion cites Tennessee Code Annotated, Section 1-3-119, which provides that "for legislation enacted by the general assembly to create or confer a private right of action, the legislation must contain express language creating or conferring the right." Absent such express language, "no court of this state, licensing board, or administrative agency shall construe or interpret a statute to impliedly create or confer a private right of action except as otherwise provided in this section." The Healthy Workplace Act contains no such provision.

Enhanced Immunity

The Healthy Workplace Act includes the following statement about governmental immunity and employees' personal liability for abusive conduct in the workplace (codified at Tennessee Code Annotated, Section 50-1-504):

Notwithstanding § 29-20-205, if an employer adopts the model policy created by TACIR pursuant to § 50-1-503(a) or adopts a policy that conforms to the requirements set out in § 50-1-503(b), then the employer shall be immune from suit for any employee's abusive conduct that results in negligent or intentional infliction of mental anguish. Nothing in this section shall be construed to limit the personal liability of an employee for any abusive conduct in the workplace.

The state is immune from suit under Article 1, Section 17, of the Tennessee constitution, and a claimant may not seek relief from the state except as provided in Tennessee Code Annotated, Section 9-8-307(a), which authorizes certain monetary claims against state government. Similarly, the Government Tort Liability Act (GTLA) found in Tennessee Code Annotated, Title 29, Chapter 20, Parts 1 and 2, removes common-law governmental immunity in specifically enumerated situations. Tennessee Code Annotated, Section 29-20-201(a) provides that

Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary.

The request to the Attorney General asked whether adopting the model policy or a policy that otherwise met the requirements of the Healthy Workplace Act would create immunity for the state or its local governments beyond that provided by these laws. It also asked what the

effect of not adopting such a policy would be. The Attorney General responded that both the GTLA and the Claims Commission Act provide immunity for employees of governmental entities for negligent behavior while simultaneously removing immunity from governmental entities arising from such claims. Both of these acts, however, specifically provide that there is no immunity for employees acting willfully, maliciously, criminally, or for personal gain, and both laws preserve the immunity of governmental entities in such instances of intentional wrongdoing. Because the Healthy Workplace Act states that upon adoption of the model policy or one that conforms to the requirements set forth in Tennessee Code Annotated, Section 50-1-504, the new law “appears to supplement that immunity by adding a specific immunity for negligent infliction of mental anguish.” The opinion explains:

. . . whereas the GTLA and the Claims Commission Act permit plaintiffs to sue state and local governments for most negligent acts of their employees, the Healthy Workplace Act carves out a specific type of negligence-negligent infliction of emotional anguish—for which plaintiffs *cannot* bring suit against governmental entities, provided those entities have adopted a policy conforming to the requirements of Tennessee Code Annotated, Section 50-1-504.

All Government Entities Affected

The Healthy Workplace Act applies to “any department, commission, board, office, or other agency of the executive, legislative, or judicial branch of state government.” The Act also defines “employer” as “any agency, county, metropolitan government, municipality, or other political subdivision of this state,” which clearly includes most parts of the state and local governments. The Attorney General was asked to clarify whether the Act applies to quasi-governmental agencies such as housing authorities, utility districts, and development districts. He responded that, based on previous opinions, Public Chapter 997 applies to these types of governmental organizations as well.

Adoption Process a Matter of Local Law

Public Chapter 997 does not specify what entities within any particular government have authority to adopt an abusive conduct-prevention policy. Within state government, the Department of Human Resources could adopt it for executive branch agencies. For county and city governments, it is less clear because they include several independent elective offices. To address this concern, the request to the Attorney General posed the question: “Who has the authority to adopt such a policy in a county government or city government?” The Attorney General, however, declined to answer citing lack of authorization to opine on matters of local law:

This is a question of local law, the answer to which would involve an interpretation of the particular charter provisions, ordinances and other laws, rules, and regulations of any local government to which the Act applies. Since

this Office is not authorized to opine on matters of local law, we decline to respond to this question.

Development of the Policy

Public Chapter 997 directed the Commission to consult with the Tennessee Department of Human Resources and various interested municipal and county organizations to develop the model policy. To comply with this directive, commission staff convened a workgroup representing state, county, and city governments, as well as public sector employees. (For a complete list of the workgroup's members, see appendix C.)

Before convening the workgroup, commission staff interviewed several people knowledgeable about workplace abuse issues, including the bill's sponsors or their staff, representatives of national organizations that promote prevention of workplace bullying, and individuals who have experienced abusive conduct in the workplace. In addition, staff reviewed various materials on this topic to better understand how workplace abuse is defined in other contexts and how the issue has been addressed elsewhere.

The workgroup met six times between July 21 and December 31, 2014, hearing presentations on the history of abusive conduct in the workplace and reviewing abusive conduct prevention policies from Tennessee and other states. The workgroup also reviewed model policies developed by two respectful workplace advocacy organizations, the Workplace Bullying Institute and Civility Partners LLC. Using these examples as a springboard for discussion, the workgroup developed the model policy, seeking to make it consistent with existing state and local government policies to the greatest extent possible.

The workgroup members reached agreement on all but one issue: how much language defining abusive conduct to include in the model policy. Some of the policies reviewed contained specific examples, and some members thought including them would help people understand the policy. Others felt that more specific language would make it difficult to determine whether any particular act or omission met the definitions in the policy and, thereby, make the policy more difficult to enforce. The policy drafted by the workgroup was a compromise and contains less specific language than several members would have liked. As part of the compromise, the workgroup recommended incorporating more detailed lists and examples into training materials to accompany the policy. Developing those materials is beyond the scope of this project; however, a list of examples and other helpful resources is included in appendix D.

Relationship to other policies and practices

Tennessee's state and local governments, higher education institutions, and primary and secondary schools have myriad laws and policies affecting employees. Government workers are protected by federal laws such as Titles VI and VII of the federal Civil Rights Act and the Americans with Disabilities Act, as well as by related state laws. These laws prohibit discrimination and harassment based on race, color, national origin, age (40 and over), sex,

pregnancy, religion, creed, disability, veteran’s status, and other category protected by state or federal civil rights laws.²² Tennessee Code Annotated, Title 20, Chapter 14, addresses violence in the workplace and includes some behaviors also mentioned in the Healthy Workplace Act. The violence in the workplace law applies to all employers that have one or more employees including “the state, its political subdivisions, and instrumentalities.” To carry out the requirements of these laws, the state’s Department of Human Resources has developed various policies relating to workplace conduct such as Policy 12-008, “Workplace Discrimination and Harassment,” Policy 12-060, “Violence in the Workplace,” and Policy 12-055, which establishes a system for employee mediation.²³ Legislation such as the Healthy Workplace Act seeks to provide similar protections to employees for incidents of abusive behavior not related to one of the federally-protected classes, such as incidents between people of the same gender or race.

Workgroup members agreed that the model policy should work in concert with these and other applicable laws and policies, including those established for various kinds of grievances, as well as processes for evaluating and training employees. Each employer will need to consider how the proposed policy will affect other guiding laws, rules, and policies that affect that workplace.

Adopting an Abusive Conduct Prevention Policy—Implementation Issues

The Healthy Workplace Act required the Commission to develop a model healthy workplace policy, one step toward addressing incidents of disrespectful workplace behavior. The law provides that adopting a policy is optional, not required. The model policy provides a general guide, but only a guide, for those entities that decide to develop their own policy. Each governmental entity will need to determine how the policy will best fit its own existing laws, policies, and practices.

Policies can provide overall statements of intent and give guidance to all workers for addressing problems, but policies are just one piece of providing a workplace where employees and supervisors feel safe, motivated, and informed. Catherine M. Mattice, writing in *Seeking Civility? How Managers and Leaders Can Create a Bully-free Workplace*, notes that “organizations that focus on respect, civility, collaboration, innovation, and positive internal relationships generally would not allow bullying” Conversely, “organizations that focus only on what is being done wrong and how to fix it, and think about the bottom line more than their most valuable asset—employees—foster a workplace where bullying is just a normal way of life.”²⁴ An abusive conduct prevention policy needs to work in concert with other positive workplace practices including promotion of respectful organizational culture, training for all

²² Tennessee Code Annotated, Section 4-21-101.

²³ Department of Human Resources website. 2014. <http://www.tn.gov/dohr/ogc-er/policies/policies.shtml>.

²⁴ Mattice, 2013. 18.

supervisors and employees, encouragement of good communication, and constructive feedback.

In addition to its relationship to other laws, workgroup members identified several issues that may affect implementation of the Healthy Workplace Act by the variety of state and local government organizations. These include adapting the variations in agency or employer size and structure, addressing overall organizational culture, providing training for all employees, and considering whether provisions of the Healthy Workplace Act should be added to parts of Tennessee Code Annotated that related specifically to government employers and employees.

Variation in Government Size and Structure

Developing an abusive conduct prevention policy and process that any Tennessee governmental entity could adopt is challenging because of the variation in the governments themselves. The state's executive branch, for example, and several large cities and counties have separate human resources departments. Most small governments do not. And county governments, with their various independently elected officials, may have different processes from the city or state governments. Even among municipalities, the various governing structures may affect how a policy is adopted and what it requires. Because of these differences, the draft model policy had to be general enough to apply to various levels and sizes of government. Each agency or employer will need to adapt it to its own charter, laws, and processes. Even so, the smallest jurisdictions, such as very small municipalities that have only a few employees, may have difficulty identifying someone to fulfill all of the investigative responsibilities required by the policy, raising the question whether, as a practical matter, they should be exempt.

In developing an abusive conduct prevention policy, each governmental unit should strive to make the policy compatible with existing policies and procedures. It will be necessary to consider what kind of structure a government has—is it a city, a county, a state agency, a school system, or a higher education institution? And within each of these broad categories, is it governed by a particular type of charter or law? How centralized are operations generally—is there a human resources office? Are any parts affected by civil service? Who will need to approve the policy—a board, a council? What kinds of services are provided—law enforcement? administration? public works? human services? Each of these factors may affect the wording of the abusive conduct prevention policy as well as the way it is adopted.

Organizational Culture

Several sources on workplace behavior note that prevention of abusive conduct in the workplace begins with a healthy organizational culture in which positive behaviors are encouraged in addition to having processes to address negative behaviors. A lack of positive workplace practices can create a void that is more susceptible to negative behaviors. The Washington State Department of Labor and Industries, for example, notes that factors such as significant organizational change, inadequate flow of information between organizational

levels, lack of employee participation in decisions, lack of policies about behavior, role ambiguity, and role conflict can all increase the risk for bullying behavior.²⁵

Others have noted that abusive conduct cannot persist unless supervisor accountability and formal discipline procedures break down and individuals and peers who experience or see bullying say nothing. Unfortunately, where bullying persists, the person most likely to stay employed is the alleged bully.²⁶

Factors external to a specific workplace may also affect workplace conduct. Adam Cohen, writing in a 2010 TIME article, notes that mistreatment of employees may be more prevalent when economic health is bad. "In good times, abused workers can simply walk out on a job if they are being mistreated. But with unemployment at around 9.5% and five job seekers for every available job, many employees feel they have no choice but to stay put."²⁷

Training

Various experts identify training as a key component of any effort to prevent abusive conduct in the workplace, but training for all of Tennessee's governments is not yet available. Therefore the model policy encourages, rather than requires, all supervisors and employees to receive training that identifies factors that contribute to a respectful workplace, familiarizes participants with responsibilities under this policy, and provides steps to address abusive conduct incidents. For the state government and the larger local governments, this is probably not a major challenge, but for the smallest of Tennessee's governments, training may be scarce. The University of Tennessee's Municipal Technical Advisory Service and County Technical Assistance Service may make training available in the future, but it is not presently available. Catherine Mattice writes that respectful workplace training should emphasize skills such as conflict resolution, negotiation, interpersonal communication, assertiveness, empathy, stress management, leadership, optimism and self-examination. Supervisors and managers should receive training about abusive conduct specifically, so that they understand what it is, how to detect it, how to handle grievances, and how to coach aggressive employees.²⁸

Statutory Placement of Healthy Workplace Laws

Because Public Chapter 997 as originally introduced would have applied to all Tennessee public and private employers, it was drafted to amend Tennessee Code Annotated, Title 50, Chapter 1, which addresses employment relationships and practices generally. As the bill progressed through the General Assembly, however, the private employers were removed leaving only

²⁵ Washington State Department of Labor and Industries, 2.

²⁶ Crucialskills, 2014. 1.

²⁷ Cohen, 2010, 2.

²⁸ Mattice. 2013. 15.

government employers. Workgroup members suggested that implementation could be facilitated by amending sections of the Code that relate more specifically to state, county, and municipal governments. For example, Tennessee Code Annotated, Section 4-3-1703, which describes the powers and duties of the state's department of human resources, and Section 8-30-104, which describes the commissioner's responsibilities, could be amended to stipulate how the executive branch of the state government should implement the policy. Similarly, implementation requirements could be spelled out in Section 5-23-104, which lists required personnel policies for counties, in Section 6-54-123, which addresses personnel requirements for municipal governments, and Title 49, Section 5, which addresses school personnel.

MODEL ABUSIVE CONDUCT PREVENTION POLICY pursuant to Public Chapter 997, the Healthy Workplace Act²⁹

[**Note:** This optional policy has been developed to serve as a guideline for Tennessee’s cities, counties and state government agencies including higher education systems, local education agencies, and quasi-governmental entities. **Individual governmental entities may need to modify the language within it to make it consistent with their particular charters, ordinances, organizational structures and processes.** Individual governmental entities that choose to adopt an abusive conduct prevention policy may adopt any policy or set of policies that conform to the requirements of Tennessee Code Annotated, Section 50-1-503(b). Employers adopting an abusive conduct prevention policy are encouraged to provide appropriate training to supervisors and employees.]

Statement of Commitment, Values, and Purpose

***COMMENT:** This section should provide an overall statement of intent for workplace behavior, describe the processes for addressing complaints, and state explicitly that retaliation will not be tolerated. It may define who will be covered by the policy in accordance with existing policy.*

The [Insert Entity Name] is firmly committed to a workplace free from abusive conduct as defined herein. We strive to provide high quality products and services in an atmosphere of respect, collaboration, openness, safety and equality. All employees have the right to be treated with dignity and respect. All complaints of negative and inappropriate workplace behaviors will be taken seriously and followed through to resolution. Employees who file complaints will not suffer negative consequences for reporting others for inappropriate behavior.

This policy applies to all full-time and part-time employees of [Insert Entity Name] including interns. It does not apply to independent contractors, but other contract employees are included. This policy applies to any sponsored program, event or activity including, but not limited to, sponsored recreation programs and activities; and the performance by officers and employees of their employment related duties. The policy includes electronic communications by any employee.

Definition of Abusive Conduct

***COMMENT:** This section defines "abusive conduct." The language comes from Public Chapter 997. The list of items that abusive conduct does not include is provided for illustration.*

²⁹ The workgroup that developed this model policy used materials from various sources including The Workplace Bullying Institute; Civility Partners, LLC; Fulton County, Georgia; Pima County, Arizona; Ridgefield, New Jersey; and Jackson, Tennessee.

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, which 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.

A single act generally will not constitute abusive conduct, unless such conduct is determined to be severe and egregious.

Abusive conduct does **not** include

- Disciplinary procedures in accordance with adopted policies of [Insert Entity Name]
- Routine coaching and counseling, including feedback about and correction of work performance
- Reasonable work assignments, including shift, post, and overtime assignments
- Individual differences in styles of personal expression
- Passionate, loud expression with no intent to harm others
- Differences of opinion on work-related concerns
- The non-abusive exercise of managerial prerogative

Employer Responsibility

COMMENT: *This section specifies responsibilities of the employer including expectations for supervisors and that employees will be informed of the abusive conduct prevention policy.*

Supervisors and others in positions of authority have a particular responsibility to ensure that healthy and appropriate behaviors are exhibited at all times and that complaints to the contrary are addressed in a timely manner. Supervisors will

- provide a working environment as safe as possible by having preventative measures in place and by dealing immediately with threatening or potentially violent situations;
- provide good examples by treating all with courtesy and respect;

- ensure that all employees have access to and are aware of the abusive conduct prevention policy and explain the procedures to be followed if a complaint of inappropriate behavior at work is made;
- be vigilant for signs of inappropriate behaviors at work through observation and information seeking, and take action to resolve the behavior before it escalates;
- respond promptly, sensitively and confidentially to all situations where abusive behavior is observed or alleged to have occurred.

Employee Responsibility (including witnesses)

COMMENT: *This section states general expectations for employees including people who witness incidents of abusive conduct.*

Employees shall treat all other employees with dignity and respect. No employee shall engage in threatening, violent, intimidating or other abusive conduct or behaviors. Employees are expected to assume personal responsibility to promote fairness and equity in the workplace and report any incidents of abusive conduct in accordance with this policy.

Employees should co-operate with preventative measures introduced by supervisors and recognize that a finding of unacceptable behaviors at work will be dealt with through appropriate disciplinary procedures.

Retaliation

COMMENT: *This section defines retaliation and indicates that it will not be tolerated.*

Retaliation is a violation of this policy. Retaliation is *any* act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or individuals exercising rights under this policy.

Training for Supervisors and Employees

COMMENT: *This section encourages all supervisors and employees to participate in training and provides general guidelines for training content.*

All supervisors and employees are encouraged to undergo training on abusive conduct prevention conduct as directed by [Insert Entity Name]. Training should identify factors that contribute to a respectful workplace, familiarize participants with responsibilities under this policy, and provide steps to address an abusive conduct incident.

Complaint Process

COMMENT: *The next several subsections address the actual process for filing complaints, the procedures for investigation, and the resulting actions for the various parties involved. To avoid confusion, this section needs to mirror existing disciplinary processes.*

Reporting

Employees: Any employee who feels he or she has been subjected to abusive conduct is encouraged to report the matter orally or in writing to a supervisor including his or her supervisor, manager, appointing authority, elected official, or to the human resources office. Employees should not feel obligated to report their complaints to their immediate supervisor first before bringing the matter to the attention of one of the representatives identified above.

Any employee seeking to file a complaint should ensure the complaint consists of precise details of each incident of abusive conduct including dates, times, locations and any witnesses. Formal complaints should be documented in writing, but are not required to be in writing.

Witnesses: An employee who witnesses or is made aware of behavior that may satisfy the definition of abusive conduct (as defined herein) should report any and all incidents as set forth herein.

Supervisors: Supervisors must timely report known incidents involving workplace abuse, intimidation, or violence to the [HR, appointing authority or investigator]. Supervisors and appointing authorities are required to take reasonable steps to protect the complainant, including, but not limited to, separation of employees involved.

The person complained against will be notified that an allegation has been made against him or her and informed of the investigative procedure.

Investigation

Investigations of abusive conduct shall be conducted as soon as practicable and in accordance with the policies and practices of [Insert Entity Name]. The objective of the investigation is to ascertain whether the behaviors complained of occurred, and therefore will include interviewing the complainant, accused, and witnesses with direct knowledge of the alleged behaviors. All interviews will be appropriately documented. The investigation will be conducted thoroughly, objectively, with sensitivity, and with due respect for all parties. The investigator will provide a copy of the investigative report to the appointing authority for further action. All affected parties will be informed of the investigation's outcome.

Corrective Action

In the event of a finding of abusive conduct, the employer will take immediate and appropriate corrective action. Remedies may be determined by weighing the severity and frequency of the

incidences of abusive conduct and in accordance with existing disciplinary policies of [Insert Entity Name].

Any employee who engages in conduct that violates this policy or who encourages such conduct by others will be subject to corrective action. Such corrective action may include but is not limited to participation in counseling, training, and disciplinary action up to and including termination, or changes in job duties or location.

Supervisory personnel who allow abusive conduct to continue or fail to take appropriate action upon learning of such conduct will be subject to corrective action. Such corrective action may include but is not limited to participation in counseling, training, or disciplinary action up to and including termination, or changes in job duties or location.

While the [Insert Entity Name] encourages all employees to raise any concern(s) under this policy and procedure, the [Insert Entity Name] recognizes that intentional or malicious false allegations can have a serious effect on innocent people. Individuals falsely accusing another of violations of this policy will be disciplined in accordance with the disciplinary policy of [Insert Entity Name].

Any employees exhibiting continuing emotional or physical effects from the incident in question should be informed of established employee assistance programs or other available resources.

When abusive conduct has been confirmed, the employer will continue to keep the situation under review and may take additional corrective actions if necessary. Preventative measures may also be taken to reduce the reoccurrence of similar behavior or action.

Confidentiality

COMMENT: *This section expresses intent to maintain confidentiality but notes that, because of the Tennessee Open Records Act, government entities cannot guarantee that complaints will be kept completely confidential.*

To the extent permitted by law, the [Insert Entity Name] will maintain the confidentiality of each party involved in an abusive conduct investigation, complaint or charge, provided it does not interfere with the ability to investigate the allegations or to take corrective action. However, state law may prevent the employer from maintaining confidentiality of public records. Therefore, the [Insert Entity Name] cannot guarantee confidentiality.

References

- Borough of Ridgefield, New Jersey, Ordinance No. 2190, *An Ordinance Establishing an Anti-Bullying Policy, Procedures, and Programs by and within the Borough of Ridgefield*.
<http://www.ecode360.com/16167248> (accessed July 18, 2014).
- California Government Code, Chapter 306. 2014. Section 12950.1(b)
http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2051-2100/ab_2053_bill_20140909_chaptered.htm (accessed December 30, 2014).
- City of Brentwood, Tennessee. 2014. Personnel Rules and Regulations, "Section G, Harassment."
- City of Collierville, Tennessee. 2014. Human Resources Policies and Procedures: Workplace Bullying. Policy Number 15.06.
- City of Jackson, Tennessee. 2014. Anti-Bullying in the Workplace Policy.
- Cohen, Adam. 2010. "New Laws Target Workplace Bullying." TIME.
<http://content.time.com/time/nation/article/0,8599,2005358,00.html> (accessed January 26, 2015).
- Crucialskills. 2014. "How to Confront the Workplace Bully."
<http://www.crucialskills.com/2014/06/how-to-confront-the-workplace-bully/> (accessed July 18, 2014).
- Fulton County, Georgia. 2012. Resolution on Workplace Bullying:
http://www.fultoncountyga.gov/images/stories/2013News/Resolutions/WP_Bullying_R.pdf.
- Partners for Health. "Bullying." <http://here4tn.com/> (accessed February 3, 2015). [Note: Not a direct URL. Enter site and search on "bullying."]
- Pima County, Arizona, Board of Supervisors. 2013. "Policy D 23.1."
<http://webcms.pima.gov/cms/one.aspx?portalId=169&pageId=1183> (accessed January 30, 2015).
- Kansas Adjutant General, State Human Resources Guidelines, May 2012.
http://kansastag.gov/AdvHTML_Upload/files/Wrkplace%20Bullying.pdf (accessed July 12, 2014).
- Mattice, Catherine. 2013. "Respectful Workplace (Anti-Workplace Bullying Corporate Policy)." Civility Partners, LLC. (used with author's permission).
- Namie, Gary. 2013. *The Work Doctor Guide: Writing Workplace Bullying Policy and Procedures*. (used with author's permission).

- National Education Association. <http://www.nea.org/home/55743.htm>(accessed July 12, 2014).
- Tennessee Department of Human Resources. 2014. Department of Resources Policies 12-008, 12-060, and 12-055. <http://www.tn.gov/dohr/ogc-er/policies/policies.shtml> (accessed December 30, 2014).
- Tennessee School Boards Association. n.d. "Student Discrimination, Harassment, Bullying, Cyber-bullying and Intimidation." E-mail attachment from Lee Harrell, Director of Government Relations and Labor Relations, dated December 23, 2014.
- University of Missouri. 2015. "Show Me Respect Civility Toolbox." <http://civility.missouri.edu/toolbox.php> (accessed January 2, 2015).
- U.S. Department of Health and Human Services. 2004. *Workplace Violence Prevention Strategies and Research Needs*. Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. <http://www.cdc.gov/niosh/docs/2006-144/> (accessed December 30, 2014).
- Washington State Department of Labor and Industries. Stop Workplace Bullying Fact Sheets. "Workplace Bullying and Disruptive Behavior: What Everyone Needs to Know." <http://www.lni.wa.gov/Safety/Research/Workplacebullying/Default.asp> (accessed December 10, 2014).
- Workplace Bullying Institute. 2014. <http://www.workplacebullying.org/>. (accessed January 28, 2015).
- Yamada, David C., Workplace Bullying and American Employment Law: A Ten-Year Progress Report and Assessment. *Comparative Labor Law & Policy Journal*, Vol. 32, No. 1, 2010. Available at SSRN: <http://ssrn.com/abstract=1908465>. (accessed September 28, 2014).

Persons Contacted or Interviewed

Sarah Adair, Government Affairs Director
Tennessee State Employees Association

Christy Ballard, General Counsel
Tennessee Department of Education

Danielle Barnes, Assistant Commissioner
and General Counsel
Department of Human Resources

Sandra Borders, Director of Diversity and
Equal Opportunity
Commonwealth of Massachusetts

Chris Clausi, Assistant Director of Human
Resources
City of Franklin, Tennessee

Loniel Greene, General Counsel
Tennessee School Boards Association

Lee Harrell, Director of Government
Relations and Labor Relations
Tennessee School Boards Association

Anthony Haynes, Vice President for
Government Relations and Advocacy
University of Tennessee

Brian Lapps, Deputy General Counsel
University of Tennessee

Arlene Martin-Norman, Affirmative Action
Officer
Department of Children's Services

Catherine Mattice, Partner
Civility Partners, LLC

Mary Moody, General Counsel
Tennessee Board of Regents

Gary Namie, Chief Executive Officer
Workplace Bullying Institute, Inc.

Gary Nixon, Executive Director
State Board of Education

April Preston, Director of Human Resources
Tennessee Board of Regents

Antonio Parkinson
State Representative
District 98