

# PUBLICATION

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## Tennessee's Healthy Workplace Act: Extending Protection Beyond the Federal Protected Class

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In the employment context, abuse suffered by employees in the workplace occurs more frequently than one would believe. According to a February 2014 survey from the Workplace Bullying Institute, 27 percent of Americans have suffered abusive conduct at work and another 21 percent have witnessed it. Additionally, 72 percent of Americans are aware that abuse in the workplace is happening. Often times, because the abuse is not always targeted at someone in a federal protected class (i.e., race, color, religion and sex), or does not rise to the level of behavior protected under anti-discrimination laws, abused employees are left helpless, with the option to either find another job or grow thicker skin.

In June of 2014, Tennessee decided to take a stand against such workplace misconduct by passing into law the Healthy Workplace Act. While 26 states and two U.S. territories have introduced Healthy Workplace bills, Tennessee is the first to sign it into law. The Healthy Workplace Act seeks to address abusive conduct, which is repeated mistreatment of an employee that is threatening, intimidating, humiliating, work sabotage or verbal abuse. As an incentive to adopt a model anti-bullying policy, which will be created by the Tennessee advisory commission on intergovernmental relations, public sector employers are granted immunity from bullying-related lawsuits. Government employers may also create their own policy if it (1) assists employers in recognizing and responding to abusive conduct, and (2) prevents retaliation against any reporting employee. Individual employees, however, remain personally liable for any abusive conduct in the workplace.

**What should private sector employers expect?** While not currently applicable to private employers, the Healthy Workplace Act sets the stage for providing some guidance on acceptable workplace behavior. National advocates of Healthy Workplace bills argue that employers will not be convinced to enforce policies if they are not under threat of litigation. Thus, the Healthy Workplace Act is just a step in the right direction towards passing anti-bullying laws applicable to both public and private sector employers.

**What should private sector employers do?** Put a proactive policy in place that holds the abuser accountable for his or her actions. Without an anti-bullying policy, victims of abuse in the workplace remain unprotected. Employers need the policy to have a remedy or avenue to address these issues. This is especially true for workers who do not fall under a federal protected class. While a policy may not deter misconduct, it does give employers a mechanism to act and discipline workplace abusers.