

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

SB23-172 be amended as follows:

- 1 Amend printed bill, page 5, strike lines 3 through 27.
- 2 Page 6, strike lines 1 through 13.
- 3 Renumber succeeding sections accordingly.
- 4 Page 6, line 16, strike "(1)(j)" and substitute "(1)(j), (1.3)".
- 5 Page 7, strike lines 1 and 2 and substitute "unfair employment practice for  
6 an employer to ~~act as provided in this subsection (1)(a)~~ REFUSE TO HIRE,  
7 TO DISCHARGE, OR TO PROMOTE OR DEMOTE AN INDIVIDUAL WITH A  
8 DISABILITY if there is no".
- 9 Page 7, line 4, before "AND" insert "THAT WOULD ALLOW THE INDIVIDUAL  
10 TO SATISFY THE ESSENTIAL FUNCTIONS OF THE JOB".
- 11 Page 7, strike lines 14 through 21.
- 12 Page 10, before line 22 insert:  
13 "(1.3) (a) AS USED IN SUBSECTIONS (1)(a) AND (1.5) OF THIS  
14 SECTION AND IN THIS SUBSECTION (1.3), "HARASS" OR "HARASSMENT"  
15 MEANS TO ENGAGE IN, OR THE ACT OF ENGAGING IN, ANY UNWELCOME  
16 PHYSICAL OR VERBAL CONDUCT OR ANY WRITTEN, PICTORIAL, OR VISUAL  
17 COMMUNICATION DIRECTED AT AN INDIVIDUAL OR GROUP OF INDIVIDUALS  
18 BECAUSE OF THAT INDIVIDUAL'S OR GROUP'S MEMBERSHIP IN, OR  
19 PERCEIVED MEMBERSHIP IN, A PROTECTED CLASS, AS DESCRIBED IN  
20 SUBSECTION (1)(a) OF THIS SECTION, WHICH CONDUCT OR  
21 COMMUNICATION IS SUBJECTIVELY OFFENSIVE TO THE INDIVIDUAL  
22 ALLEGING HARASSMENT AND IS OBJECTIVELY OFFENSIVE TO A  
23 REASONABLE INDIVIDUAL WHO IS A MEMBER OF THE SAME PROTECTED  
24 CLASS. THE CONDUCT OR COMMUNICATION NEED NOT BE SEVERE OR  
25 PERVASIVE TO CONSTITUTE A DISCRIMINATORY OR AN UNFAIR  
26 EMPLOYMENT PRACTICE UNDER SUBSECTION (1)(a) OF THIS SECTION AND  
27 IS A VIOLATION OF SUBSECTION (1)(a) OF THIS SECTION IF:  
28 (I) SUBMISSION TO THE CONDUCT OR COMMUNICATION IS  
29 EXPLICITLY OR IMPLICITLY MADE A TERM OR CONDITION OF THE  
30 INDIVIDUAL'S EMPLOYMENT;  
31 (II) SUBMISSION TO, OBJECTION TO, OR REJECTION OF THE  
32 CONDUCT OR COMMUNICATION IS USED AS A BASIS FOR EMPLOYMENT  
33 DECISIONS AFFECTING THE INDIVIDUAL; OR

1 (III) THE CONDUCT OR COMMUNICATION HAS THE PURPOSE OR  
2 EFFECT OF UNREASONABLY INTERFERING WITH THE INDIVIDUAL'S WORK  
3 PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE  
4 WORKING ENVIRONMENT.

5 (b) THE NATURE OF THE WORK OR THE FREQUENCY WITH WHICH  
6 HARASSMENT IN THE WORKPLACE OCCURRED IN THE PAST IS NOT  
7 RELEVANT TO WHETHER THE CONDUCT OR COMMUNICATION IS A  
8 DISCRIMINATORY OR AN UNFAIR EMPLOYMENT PRACTICE UNDER  
9 SUBSECTION (1)(a) OF THIS SECTION.

10 (c) (I) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION,  
11 PETTY SLIGHTS, MINOR ANNOYANCES, AND LACK OF GOOD MANNERS DO  
12 NOT CONSTITUTE HARASSMENT UNLESS THE SLIGHTS, ANNOYANCES, OR  
13 LACK OF MANNERS, WHEN TAKEN INDIVIDUALLY OR IN COMBINATION AND  
14 UNDER THE TOTALITY OF THE CIRCUMSTANCES, MEET THE STANDARDS SET  
15 FORTH IN SUBSECTION (1.3)(a) OF THIS SECTION.

16 (II) FACTORS TO CONSIDER UNDER THE TOTALITY OF THE  
17 CIRCUMSTANCES INCLUDE:

18 (A) THE FREQUENCY OF THE CONDUCT OR COMMUNICATION,  
19 RECOGNIZING THAT A SINGLE INCIDENT MAY RISE TO THE LEVEL OF  
20 HARASSMENT;

21 (B) THE NUMBER OF INDIVIDUALS ENGAGED IN THE CONDUCT OR  
22 COMMUNICATION;

23 (C) THE TYPE OR NATURE OF THE CONDUCT OR COMMUNICATION,  
24 RECOGNIZING THAT CONDUCT OR COMMUNICATION THAT, AT ONE TIME,  
25 WAS OR IS WELCOME BETWEEN TWO OR MORE INDIVIDUALS MAY BECOME  
26 UNWELCOME TO ONE OR MORE OF THOSE INDIVIDUALS;

27 (D) THE DURATION OF THE CONDUCT OR COMMUNICATION;

28 (E) THE LOCATION WHERE THE CONDUCT OR COMMUNICATION  
29 OCCURRED;

30 (F) WHETHER THE CONDUCT OR COMMUNICATION IS  
31 THREATENING;

32 (G) WHETHER ANY POWER DIFFERENTIAL EXISTS BETWEEN THE  
33 INDIVIDUAL ALLEGED TO HAVE ENGAGED IN HARASSMENT AND THE  
34 INDIVIDUAL ALLEGING THE HARASSMENT;

35 (H) ANY USE OF EPITHETS, SLURS, OR OTHER CONDUCT OR  
36 COMMUNICATION THAT IS HUMILIATING OR DEGRADING; AND

37 (I) WHETHER THE CONDUCT OR COMMUNICATION REFLECTS  
38 STEREOTYPES ABOUT AN INDIVIDUAL OR GROUP OF INDIVIDUALS IN A  
39 PROTECTED CLASS."

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