



Rhode Island Society for Human Resource Management State Chapter

Statement of
Francesco A. DeLuca, Esq., Director of Legislative Affairs
On behalf of the Rhode Island Society for Human Resource Management State Chapter
Submitted to the House Committee on Labor

H 8044 – AN ACT RELATING TO LABOR AND LABOR RELATIONS -- WORKPLACE PSYCHOLOGICAL SAFETY ACT

March 27, 2024

To the Honorable Members of the House Committee on Labor:

My name is Francesco A. DeLuca, Esq. I am a member of the law firm of Epstein Becker & Green, P.C., where I practice labor and employment law. Since 2023, I have had the honor of serving in the role of Director of Legislative Affairs for the Rhode Island Society for Human Resource Management State Chapter (“RI SHRM”).

RI SHRM is an affiliate of the Society for Human Resource Management, the world’s largest HR professional society representing more than 300,000 members in more than 165 countries. RI SHRM is a volunteer organization representing the interests of more than 500 human resource professionals throughout the State of Rhode Island. Our members are a cross-section of the Rhode Island economy, coming from such diverse sectors such as education, government, healthcare, hospitality and customer service, manufacturing, non-profit, professional services, small business, and technology. Through our exceptional programming and our legislative advocacy efforts over the years, we have become the trusted voice of the Rhode Island HR and business communities.

On behalf of our members, I am grateful for the opportunity to provide the House Committee on Labor with this written testimony in opposition to **H 8044 – An Act Relating to Labor and Labor Relations -- Workplace Psychological Safety Act**.

RI SHRM’s core values include respect, integrity, and inclusion in the workplace. *See* RI SHRM, *About Rhode Island SHRM*, <https://rishrm.wildapricot.org/AboutUs>. Consistent with these values, RI SHRM encourages employers to provide employees with a workplace that is safe and that employees want to work in. Nonetheless, RI SHRM opposes H 8044, which would, through vague and confusing language, impose significant liability on employers for workplace “bullying” for several reasons:

- H 8044’s definition of “psychological abuse”—namely, “mentally provocative harassment”—is vague, making it difficult for employers to understand their obligations.

- Likewise, imposing a “general duty” on employers “to ensure that all employees are treated respectfully and with dignity” without defining either “respectfully” and “dignity” creates uncertainty for employers and will engender costly litigation as employers and employees will doubtlessly resort to the courts to define these terms.
- While H 8044 requires employers to “monitor” their workplace for potential “incidents of psychological abuse,” it does not contain a definition of “monitor” or provide any examples of adequate “monitoring” activities. Again, employers will not have clarity on their obligations until employers and employees expend significant resources litigating this issue.
- H 8044 imposes unclear and onerous reporting requirements on employers, including requiring them to report “the number of employee complaints of abusive behavior,” “stress leave rates,” and “investigation rates.” It also requires employers to report demographic data that have nothing to do with alleged “bullying,” such as “workforce gender and racial makeup” and “de-identified wage and salary data by protected category.”
- Certain provisions purport to require a federal agency, the Occupational Safety and Health Administration, to take certain actions with respect to employers’ mandatory reports and employee’s reports of alleged “psychological abuse.” Such provisions are problematic under the Supremacy Clause of the Constitution of the United States. *See Hancock v. Train*, 426 U.S. 167, 179 (1976) (recognizing “the fundamental importance of the principles shielding federal installations and activities from regulation by the States”).
- Several of the remedies H 8044 provides, including requiring employers to issue “[a]n apology to the complainant employee” and provide “[p]ublic notification of the case outcome” raise grave First Amendment concerns. *See Sysco Grand Rapids, LLC v. Nat’l Lab. Rels. Bd.*, 825 F. App’x 348, 359 (6th Cir. 2020) (“It is foreign to our system to force named individuals to speak prescribed words to attain rehabilitation or to enlighten an assembled audience.... Such orders mandate a ‘confession of sins’ and conjure up ‘the system of ‘criticism-self-criticism’ devised by Stalin and adopted by Mao.’”) (cleaned up).
- Existing laws provide adequate legal protection for, and incentive to prevent, many, if not all, “physical injuries” and “psychological abuse” in the workplace, including the Occupational Safety and Health Act (29 U.S.C. § 615, *et seq.*), the Division of Occupational Safety Law (R.I. Gen. Laws § 28-20-1, *et seq.*), the Workers’ Compensation Law (R.I. Gen. Laws § 28-32-1, *et seq.*, § 28-33-1, *et seq.*, § 28-34-1, *et seq.*, § 28-35-1, *et seq.*, § 28-36-1, *et seq.*, & § 28-37-1, *et seq.*), the Fair Employment Practices Act (R.I. Gen. Laws § 28-5-1, *et seq.*), and the Workplace Violence Protection Act (R.I. Gen. Laws § 28-52-1, *et seq.*). Enacting H 8044 is unnecessary and would only serve to create confusion.

RI SHRM recognizes that eliminating bullying in the workplace is an important human resources function. In fact, on March 19, 2024, RI SHRM hosted a program on this topic entitled “Silence is Expensive: How Workplace Bullying Drains Your Bottom Line.” *See* RI SHRM, *Silence is Expensive: How Workplace Bullying Drains Your Bottom Line*, <https://rishrm.wildapricot.org/event-5623456?CalendarViewType=1&SelectedDate=3/27/2024>.

But RI SHRM is concerned about the uncertainties and potential legal liability H 8044 would create. Accordingly, RI SHRM urges the General Assembly not to pass H 8044.

Thank you for your time and consideration, and please feel free to contact me to continue this important conversation.

Respectfully submitted by:

/s/ Francesco A. DeLuca

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