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HOUSE BILL NO. 1616

Offered January 11, 2023

Prefiled January 6, 2023

A BILL to amend and reenact § 40.1-27.3 of the Code of Virginia and to amend the Code of Virginia by adding in Article 5 of Chapter 3 of Title 40.1 a section numbered 40.1-51.4:6, relating to workplace violence policy required for certain employers; civil penalty.

Patrons—Clark, Adams, D.M., Anderson, Bagby, Glass, Gooditis, Guzman, Hope, Jenkins, Kory, Maldonado, Mundon King, Scott, D.L., Shin, Simon and Williams Graves

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-27.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 3 of Title 40.1 a section numbered 40.1-51.4:6 as follows:

§ 40.1-27.3. Retaliatory action against employee prohibited.

A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee:

1. Or a person acting on behalf of the employee in good faith reports a violation of any federal or state law or regulation to a supervisor or to any governmental body or law-enforcement official;

2. Is requested by a governmental body or law-enforcement official to participate in an investigation, hearing, or inquiry;

3. Refuses to engage in a criminal act that would subject the employee to criminal liability;

4. Refuses an employer's order to perform an action that violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason; ~~or~~

5. Provides information to or testifies before any governmental body or law-enforcement official conducting an investigation, hearing, or inquiry into any alleged violation by the employer of federal or state law or regulation; *or*

6. *Reports an incident of workplace violence under a policy developed pursuant to § 40.1-51.4:6 or otherwise.*

B. This section does not:

1. Authorize an employee to make a disclosure of data otherwise protected by law or any legal privilege;

2. Permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth; or

3. Permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

C. A person who alleges a violation of this section may bring a civil action in a court of competent jurisdiction within one year of the employer's prohibited retaliatory action. The court may order as a remedy to the employee (i) an injunction to restrain continued violation of this section, (ii) the reinstatement of the employee to the same position held before the retaliatory action or to an equivalent position, and (iii) compensation for lost wages, benefits, and other remuneration, together with interest thereon, as well as reasonable attorney fees and costs.

§ 40.1-51.4:6. Workplace violence; employer policy required; civil penalty.

A. Each employer of 100 or more employees shall develop, implement, and maintain an effective workplace violence policy that provides a mechanism for employees to report workplace violence and measures to protect employees from workplace violence based on the requirements of this section no later than January 1, 2024. For the purposes of this section, "workplace violence" means any act of violence or threat of violence, without regard to intent, that occurs at an employer's workplace while an employee performs work duties. "Workplace violence" includes intimidation, bullying, verbal abuse and threats, harassment, assault, refusal to obey workplace policies, sabotaging or stealing workplace equipment, sabotaging or stealing from others in the workplace, suicidal threats, physical fights, destruction of property, displays of extreme rage, and the use of weapons to harm others.

B. An employer's workplace violence policy shall be tailored and specific to conditions and hazards for the employer's workplace, including job-specific risk factors and risk factors specific to each work area or unit. Such policy shall be suitable for the size, complexity, and type of operations at the employer's workplace and shall remain in effect at all times. Such policy may be developed in

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58 consultation with stakeholders or experts who specialize in workplace violence prevention, emergency
59 response, or other related areas of expertise for all relevant aspects of the policy.

60 C. Each policy developed pursuant to this section shall include procedures and methods for (i)
61 identifying the individual or team responsible for implementation of the policy; (ii) reporting instances,
62 threats, concerns, risks, and hazards of workplace violence to the responsible individual or team; (iii)
63 incident response and post-incident investigation, including procedures for employers to respond to
64 reports of workplace violence; (iv) emergency response, including procedures for threats of incidents
65 involving a firearm or dangerous weapon; (v) communicating with and training employees on workplace
66 violence hazards and threats, work practice controls, the employer's policy, and procedures for
67 confronting, responding to, and reporting workplace violence threats, incidents, and concerns; (vi)
68 assessing risks of workplace violence and hazards to employees exposed to such risks and hazards; and
69 (vii) hazard prevention, engineering controls, or work practice controls to correct hazards in a timely
70 manner.

71 D. An employer to which this section applies shall document all reports of incidents of workplace
72 violence, any incident response or post-incident investigation undertaken following such a report, and
73 any corrective measures taken for each investigation conducted pursuant to the policy required by this
74 section. Such documentation shall include, at a minimum, a description of (i) the violent incident; (ii)
75 the date, time, and location of the incident and the names and job titles of involved employees; (iii) the
76 nature and extent of injuries to covered employees; and (iv) if applicable, how the incident was abated.
77 If an employer learns of a workplace violence incident for which a report has not been submitted, the
78 employer shall document the incident no later than seven days after the employer learns of such
79 incident.

80 Each employer shall maintain the documentation required by this subsection for not less than five
81 years and make such documentation available upon request to (a) its employees, provided that any such
82 documentation omit any element of personal identifying information sufficient to allow identification of
83 any individual alleged to have committed a violent incident or (b) law enforcement.

84 E. An employer shall ensure that its policy for mitigating workplace violence developed pursuant to
85 the requirements of this section is made available at all times to its employees.

86 F. An employer to which this section applies shall provide information regarding its policy for
87 mitigating workplace violence and associated procedures and methods for submitting a report under
88 such policy to each employee upon commencement of employment as part of the employer's onboarding
89 process. This information shall be appropriate in content and vocabulary to the language, educational
90 level, and literacy of the employee.

91 G. An employer that fails to comply with the requirements of this section shall be subject to a civil
92 penalty of not more than \$1,000 per violation. Civil penalties under this subsection shall be assessed by
93 the Department and paid to the Literary Fund, provided that no civil penalty shall be assessed under
94 this subsection prior to July 1, 2025.

95 H. No employer to which this section applies shall discriminate or retaliate against any employee for
96 (i) reporting a workplace violence incident, threat, or concern to, or seeking assistance or intervention
97 with respect to such incident, threat, or concern from, the employer, law enforcement, local emergency
98 services, or a local, state, or federal government agency or (ii) exercising any other rights under this
99 section.

100 I. The provisions of § 40.1-51.4:5 that provide immunity from all civil liability to any employee who
101 truthfully reports threatening conduct at the workplace shall apply to any employee who truthfully
102 reports workplace violence under a policy developed pursuant to this section.

103 J. Nothing in this section shall be construed to limit or prevent employees from reporting violent
104 incidents to appropriate law enforcement or to limit or diminish any other employee protections in local,
105 state, or federal law.