HOUSE DOCKET, NO. 2872 FILED ON: 1/21/2011

HOUSE . . . . . No. 2310

The Commonwealth of Massachusetts

PRESENTED BY:

Ellen Story and Katherine M. Clark

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act addressing workplace bullying, mobbing and harassment, without regard to protected class status.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ellen Story	*3rd Hampshire*
Kevin G. Honan	*17th Suffolk*
Nick Collins	*4th Suffolk*
Denise Andrews	*2nd Franklin*
Benjamin Swan	*11th Hampden*
Alice K. Wolf	*25th Middlesex*
Peter V. Kocot	*1st Hampshire*
Louis L. Kafka	*8th Norfolk*
Kay Khan	*11th Middlesex*

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HOUSE . . . . . No. 2310

By Representative Story of Amherst and Senator Clark, a joint petition (accompanied by bill, House, No. 2310) of Ellen Story and others for legislation to address workplace bullying, mobbing and harassment without regard to protected class status. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *699* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act addressing workplace bullying, mobbing and harassment, without regard to protected class status.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws are hereby amended by inserting after chapter 151E the following chapter:-

Chapter 151F

THE HEALTHY WORKPLACE

Section 1. (a) The General Court finds that:

(1) The social and economic well-being of the Commonwealth is dependent upon healthy and productive employees;

(2) Between 37 and 59 percent of employees directly experience health-endangering workplace bullying, abuse, and harassment and this mistreatment is approximately four times more prevalent than sexual harassment alone;

(3) Workplace bullying, mobbing and harassment can inflict serious harm upon targeted employees, including feelings of shame and humiliation, severe anxiety, depression,

13 suicidal tendencies, impaired immune systems, hypertension, increased risk of cardiovascular
14 disease and symptoms consistent with post-traumatic stress disorder;

15 (4) Abusive work environments can have serious consequences for employers,
16 including reduced employee productivity and morale, higher turnover and absenteeism rates, and
17 increases in medical and workers' compensation claims;

18 (5) If mistreated employees who have been subjected to abusive treatment at work
19 cannot establish that the behavior was motivated by race, color, sex, sexual orientation, national
20 origin or age, they are unlikely to be protected by the law against such mistreatment;

21 (6) Legal protection from abusive work environments should not be limited to
22 behavior grounded in protected class status as that provided for under employment
23 discrimination statutes; and,

24 (7) Existing workers' compensation plans and common-law tort actions are
25 inadequate to discourage this behavior or to provide adequate relief to employees who have been
26 harmed by abusive work environments.

27 (b) It is the purpose of this chapter:

28 (1) To provide legal relief for employees who have been harmed psychologically,
29 physically or economically, by being deliberately subjected to abusive work environments;

30 (2) To provide legal incentive for employers to prevent and respond to abusive
31 mistreatment of employees at work.

32 Section 2. For the purposes of this chapter, the following words and phrases shall have
33 the following meanings:-

34 "Abusive conduct", employee acts, omissions, or both, that a reasonable person would
35 find hostile, based on the severity, nature, and frequency of the employee's conduct, including,
36 but not limited to: repeated infliction of verbal abuse such as the use of derogatory remarks,
37 insults and epithets; verbal or physical conduct of a threatening, intimidating or humiliating
38 nature; the sabotage or undermining of an employee's work performance; or attempts to exploit a
39 employee's known psychological or physical vulnerability. A single act normally shall not
40 constitute abusive conduct, but an especially severe and egregious act may meet this standard;

41 "Abusive work environment", an employment condition where any employee, acting
42 with malice, subjects another employee to abusive conduct so severe that it causes tangible harm
43 to the target of the abusive conduct employee;

44 "Adverse employment action", an outcome which negatively impacts an employee,
45 including but not limited to: termination, constructive discharge, demotion, unfavorable
46 reassignment, failure to promote, disciplinary action or reduction in compensation.

47 “Constructive discharge”, occurs when an employee:

48 (1) reasonably believed he or she was subjected to abusive conduct;

49 (2) resigned because of that abusive conduct; and,

50 (3) prior to resigning, brought to the employer’s attention the existence of the abusive
51 conduct, and the employer failed to take reasonable steps to correct the situation.

52 “Malice”, the desire to cause pain, injury or distress to another.

53 “Physical harm”, the material impairment of a person’s physical health or bodily
54 integrity, as established by competent evidence.

55 “Psychological harm”, the material impairment of a person’s mental health, as
56 established by competent evidence.

57 “Tangible harm”, psychological harm or physical harm.

58 Section 3. (a) No employee shall be subjected to an abusive work environment.

59 (b) No employer or employee shall retaliate in any manner against an employee who
60 has opposed any unlawful employment practice under this chapter, or who has made a charge,
61 testified, assisted, or participated in any manner in an investigation or proceeding under this
62 chapter, including, but not limited to, internal complaints and proceedings, arbitration and
63 mediation proceedings and legal actions.

64 Section 4. (a) An employer shall be vicariously liable for a violation of section 3 of this
65 chapter committed by its employee.

66 (b) Where the alleged unlawful employment practice does not include an adverse
67 employment action, it shall be an affirmative defense for an employer only that:

68 (1) the employer exercised reasonable care to prevent and correct promptly any
69 actionable behavior; and,

70 (2) the complainant employee unreasonably failed to take advantage of appropriate
71 preventive or corrective opportunities provided by the employer.

72 Section 5.(a) An employee may be individually liable for a violation of section 3 of this
73 chapter.

74 (b) It shall be an affirmative defense for an employee only that the employee
75 committed a violation of section 3 of this chapter at the direction of the employer, under threat of
76 an adverse employment action.

77 Section 6. It shall be an affirmative defense that:

78 (a) The complaint is based on an adverse employment action reasonably made for
79 poor performance, misconduct, or economic necessity;

80 (b) The complaint is based on a reasonable performance evaluation; or,

81 (c) The complaint is based on a defendant's reasonable investigation about
82 potentially illegal or unethical activity.

83 Section 7. (a) Where a defendant has been found to have violated section 3 of this
84 chapter, the court may enjoin the defendant from engaging in the unlawful employment practice
85 and may order any other relief that is deemed appropriate, including, but not limited to,
86 reinstatement, removal of the offending party from the complainant's work environment, back
87 pay, front pay, medical expenses, compensation for emotional distress, punitive damages and
88 attorney's fees.

89 (b) Where an employer has been found to have committed a violation of section 3 of
90 this chapter that did not culminate in an adverse employment action, its liability for damages for
91 emotional distress shall not exceed $25,000, and it shall not be subject to punitive damages. This
92 provision does not apply to individually named employee defendants.

93 Section 8. (a) This Chapter shall be enforced solely by a private right of action.

94 (b) An action commenced under this chapter must be commenced no later than one
95 year after the last act that constitutes the alleged violation of section 3 of this chapter.

96 Section 9. The remedies provided for in this chapter shall be in addition to any remedies
97 provided under any other law, and nothing in this chapter shall relieve any person from any
98 liability, duty, penalty or punishment provided by any other law, except that if an employee
99 receives workers' compensation for medical costs for the same injury or illness pursuant to both
100 this chapter and the workers' compensation law, or compensation under both this chapter and that
101 law in cash payments for the same period of time not working as a result of the compensable
102 injury or illness or the unlawful employment practice, the payments of workers' compensation
103 shall be reimbursed from compensation paid under this chapter.