

SENATE No. 699

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 151E the
2 following chapter:-

3 Chapter 151F

4 THE HEALTHY WORKPLACE

5 Section 1 -- Preamble

6 (a) Findings

7 The General Court finds that:

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

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

13 (3) Workplace bullying, mobbing, and harassment can inflict serious harm upon
14 targeted employees, including feelings of shame and humiliation, severe anxiety, depression,
15 suicidal tendencies, impaired immune systems, hypertension, increased risk of cardiovascular
16 disease, and symptoms consistent with post-traumatic stress disorder;

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

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

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

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

29 (b) Purpose

30 It is the purpose of this Chapter:

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

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

35 Section 2 -- Definitions

36 (a) Abusive work environment. An abusive work environment exists when the
37 defendant, acting with malice, subjects an employee to abusive conduct so severe that it causes
38 tangible harm to the employee.

39 (1) Abusive conduct. Abusive conduct is conduct, including acts, omissions, or both,
40 that a reasonable person would find hostile, based on the severity, nature, and frequency of the
41 defendant's conduct. Abusive conduct may include, but is not limited to: repeated infliction of
42 verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal or physical
43 conduct of a threatening, intimidating, or humiliating nature; the sabotage or undermining of an
44 employee's work performance; or attempts to exploit a employee's known psychological or
45 physical vulnerability. A single act normally will not constitute abusive conduct, but an
46 especially severe and egregious act may meet this standard.

47 (2) Malice. Malice is defined as the desire to cause pain, injury, or distress to
48 another.

49 (b) Tangible harm. Tangible harm is defined as psychological harm or physical
50 harm.

51 (1) Psychological harm. Psychological harm is the material impairment of a person's
52 mental health, as established by competent evidence.

53 (2) Physical harm. Physical harm is the material impairment of a person's physical
54 health or bodily integrity, as established by competent evidence.

55 (c) Adverse employment action. An adverse employment action includes, but is not
56 limited to, a termination, demotion, unfavorable reassignment, failure to promote, disciplinary
57 action, or reduction in compensation.

58 (d) Constructive discharge. A constructive discharge shall be considered a
59 termination, and, therefore, an adverse employment action within the meaning of this Chapter. A
60 constructive discharge exists where: (1) the employee reasonably believed he or she was
61 subjected to abusive conduct; (2) the employee resigned because of that abusive conduct; and,
62 (3) prior to resigning, the employee brought to the employer's attention the existence of the
63 abusive conduct and the employer failed to take reasonable steps to correct the situation.

64 Section 3 – Unlawful Employment Practices

65 (a) Abusive Work Environment. It shall be an unlawful employment practice under
66 this Chapter to subject an employee to an abusive work environment as defined by this Chapter.

67 (b) Retaliation. It shall be an unlawful employment practice under this Chapter to
68 retaliate in any manner against an employee who has opposed any unlawful employment practice
69 under this Chapter, or who has made a charge, testified, assisted, or participated in any manner in
70 an investigation or proceeding under this Chapter, including, but not limited to, internal
71 complaints and proceedings, arbitration and mediation proceedings, and legal actions.

72 Section 4 – Employer Liability and Defense

73 (a) An employer shall be vicariously liable for an unlawful employment practice, as
74 defined by this Chapter, committed by its employee.

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

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

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

81 Section 5 – Employee Liability and Defense

82 (a) An employee may be individually liable for an unlawful employment practice as
83 defined by this Chapter.

84 (b) It shall be an affirmative defense for an employee only that the employee
85 committed an unlawful employment practice as defined in this Chapter at the direction of the
86 employer, under threat of an adverse employment action.

87 Section 6 – Affirmative Defenses

88 It shall be an affirmative defense that:

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

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

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

94 Section 7 -- Relief

95 (a) Relief generally. Where a defendant has been found to have committed an
96 unlawful employment practice under this Chapter, the court may enjoin the defendant from
97 engaging in the unlawful employment practice and may order any other relief that is deemed
98 appropriate, including, but not limited to, reinstatement, removal of the offending party from the
99 complainant's work environment, back pay, front pay, medical expenses, compensation for
100 emotional distress, punitive damages, and attorney's fees.

101 (b) Employer liability. Where an employer has been found to have committed an
102 unlawful employment practice under this Chapter that did not culminate in an adverse
103 employment action, its liability for damages for emotional distress shall not exceed \$25,000, and
104 it shall not be subject to punitive damages. This provision does not apply to individually named
105 employee defendants.

106 Section 8 -- Procedures

107 (a) Private right of action. This Chapter shall be enforced solely by a private right of
108 action.

109 (b) Time limitations. An action commenced under this Chapter must be commenced
110 no later than one year after the last act that constitutes the alleged unlawful employment practice.

111 Section 9 – Effect on Other Legal Relationships

112 The remedies provided for in this Chapter shall be in addition to any remedies provided
113 under any other law, and nothing in this Chapter shall relieve any person from any liability, duty,
114 penalty or punishment provided by any other law, except that if an employee receives workers'
115 compensation for medical costs for the same injury or illness pursuant to both this Chapter and
116 the workers' compensation law, or compensation under both this Chapter and that law in cash
117 payments for the same period of time not working as a result of the compensable injury or illness
118 or the unlawful employment practice, the payments of workers' compensation shall be
119 reimbursed from compensation paid under this Chapter.