SENATE DOCKET, NO. 1446 FILED ON: 1/21/2011

SENATE . . . . . No. 916

The Commonwealth of Massachusetts

PRESENTED BY:

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 adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Katherine M. Clark	*Fifth Middlesex*
Ellen Story	*3rd Hampshire*
Frank I. Smizik	*15th Norfolk*
John W. Scibak	*2nd Hampshire*
Gloria L. Fox	*7th Suffolk*
Denise Andrews	*2nd Franklin*
David S. Holway	*National Association of Government Employees 159 Burgin Parkway Quincy, MA 02169*

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SENATE . . . . . No. 916

By Ms. Clark, a petition (accompanied by bill, Senate, No. 916) of Katherine M. Clark, Ellen Story, Frank I. Smizik, John W. Scibak and other members of the General Court for legislation to address workplace bullying, mobbing, and harrassment, without regard to protected class status. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. 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, suicidal tendencies, impaired immune systems, hypertension, increased risk of cardiovascular disease and symptoms consistent with post-traumatic stress disorder;

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

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

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

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

(b) It is the purpose of this chapter:

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

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

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

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

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

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

"Constructive discharge", occurs when an employee:

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

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

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

"Malice", the desire to cause pain, injury or distress to another.

"Physical harm", the material impairment of a person's physical health or bodily integrity, as established by competent evidence.

"Psychological harm", the material impairment of a person's mental health, as established by competent evidence.

"Tangible harm", psychological harm or physical harm.

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

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

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

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

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

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

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

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

Section 6. It shall be an affirmative defense that:

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

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

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

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

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

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

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

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