

HOUSE No. 1771

The Commonwealth of Massachusetts

PRESENTED BY:

Ellen Story and Jennifer L. Flanagan

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:
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>

<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>

Sal N. DiDomenico
Stephen L. DiNatale

Middlesex and Suffolk
3rd Worcester

HOUSE No. 1771

By Representative Story of Amherst and Senator Flanagan, a joint petition (accompanied by bill, House, No. 1771) of Ellen Story, Jennifer L. Flanagan and others for legislation to address workplace bullying, mobbing and harrassment without regard to protected class status. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1766 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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

2 chapter:-

3 Chapter 151G

4 THE HEALTHY WORKPLACE

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

6 (1) The social and economic well-being of the Commonwealth is dependent upon

7 healthy and productive employees;

8 (2) At least a third of all employees will directly experience health-endangering
9 workplace bullying, abuse, and harassment during their working lives, and this form of
10 mistreatment is approximately four times more prevalent than sexual harassment alone;

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

15 (4) Abusive work environments can have serious consequences for employers, including
16 reduced employee productivity and morale, higher turnover and absenteeism rates, and increases
17 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 behavior
22 grounded in protected class status as that provided for under employment discrimination statutes;
23 and,

24 (7) Existing workers' compensation plans and common-law tort actions are inadequate to
25 discourage this behavior or to provide adequate relief to employees who have been harmed by
26 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 deliberate exposure 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”, acts, omissions, or both, that a reasonable person would find abusive,
35 based on the severity, nature, and frequency of the conduct, including, but is not limited to:
36 repeated verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal, non-
37 verbal, or physical conduct of a threatening, intimidating, or humiliating nature; or the sabotage
38 or undermining of an employee’s work performance. It shall be considered an aggravating factor
39 if the conduct exploited an employee’s known psychological or physical illness or disability. A
40 single act normally shall not constitute abusive conduct, but an especially severe and egregious
41 act may meet this standard;

42 “Abusive work environment”, an employment condition when an employer or one or
43 more its employees, acting with intent to cause pain or distress to an employee, subjects that
44 employee to abusive conduct that causes physical harm, psychological harm, or both;

45 “Adverse employment action”, an outcome which negatively impacts an employee,
46 including but not limited to: a termination, demotion, unfavorable reassignment, failure to
47 promote, disciplinary action, or reduction in compensation.

48 “Constructive discharge”, an adverse employment action where:

49 (1) the employee reasonably believed he or she was subjected to an abusive work
50 environment;

51 (2) the employee resigned because of that conduct; and,

52 (3) the employer was aware of the abusive conduct prior to the resignation and failed to
53 stop it.

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

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

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 has
60 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 violation of said section 3 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 committed
75 a violation of said section 3 at the direction of the employer, under actual or implied threat of an
76 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 poor
79 performance, misconduct, or economic necessity; or,

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

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

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

89 (b) Where an employer is liable for a violation of said section 3 that did not include an
90 adverse employment action, emotional distress damages and punitive damages may be awarded
91 only when the actionable conduct was extreme and outrageous. This limitation does not apply to
92 individually named employee defendants.

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

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

96 Section 9. (a) Nothing in this chapter shall supersede rights and obligations provided
97 under collective bargaining laws and regulations.

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