SENATE DOCKET, NO. 768 FILED ON: 1/18/2017

SENATE . . . . . No. 1013

The Commonwealth of Massachusetts

PRESENTED BY:

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:	
Jennifer L. Flanagan	*Worcester and Middlesex*	
Diana DiZoglio	*14th Essex*	*1/23/2017*
Frank I. Smizik	*15th Norfolk*	*1/24/2017*
John W. Scibak	*2nd Hampshire*	*1/24/2017*
Angelo J. Puppolo, Jr.	*12th Hampden*	*1/25/2017*
RoseLee Vincent	*16th Suffolk*	*1/25/2017*
Thomas M. McGee	*Third Essex*	*1/25/2017*
Louis L. Kafka	*8th Norfolk*	*1/25/2017*
Barbara A. L'Italien	*Second Essex and Middlesex*	*1/25/2017*
Lori A. Ehrlich	*8th Essex*	*1/26/2017*
Daniel M. Donahue	*16th Worcester*	*1/27/2017*
Michael D. Brady	*Second Plymouth and Bristol*	*1/27/2017*
James J. O'Day	*14th Worcester*	*1/31/2017*
Aaron Vega	*5th Hampden*	*1/31/2017*
Kenneth J. Donnelly	*Fourth Middlesex*	*1/31/2017*
Denise Provost	*27th Middlesex*	*1/31/2017*
Jonathan Hecht	*29th Middlesex*	*1/31/2017*

Bruce J. Ayers	*1st Norfolk*	*1/31/2017*
Ann-Margaret Ferrante	*5th Essex*	*1/31/2017*
Brian M. Ashe	*2nd Hampden*	*1/31/2017*
Chris Walsh	*6th Middlesex*	*1/31/2017*
Ruth B. Balser	*12th Middlesex*	*2/1/2017*
Danielle W. Gregoire	*4th Middlesex*	*2/1/2017*
Steven Ultrino	*33rd Middlesex*	*2/1/2017*
Tackey Chan	*2nd Norfolk*	*2/1/2017*
Donald F. Humason, Jr.	*Second Hampden and Hampshire*	*2/1/2017*
Brendan P. Crighton	*Third Essex*	*2/1/2017*
John J. Mahoney	*13th Worcester*	*2/1/2017*
Dylan Fernandes	*Barnstable, Dukes and Nantucket*	*2/2/2017*
Solomon Goldstein-Rose	*3rd Hampshire*	*2/2/2017*
William N. Brownsberger	*Second Suffolk and Middlesex*	*2/2/2017*
Russell E. Holmes	*6th Suffolk*	*2/3/2017*
Jonathan D. Zlotnik	*2nd Worcester*	*2/3/2017*
Kevin G. Honan	*17th Suffolk*	*2/3/2017*
Joan B. Lovely	*Second Essex*	*2/3/2017*
James B. Eldridge	*Middlesex and Worcester*	*2/3/2017*
Claire D. Cronin	*11th Plymouth*	*2/3/2017*
David T. Vieira	*3rd Barnstable*	*2/3/2017*
Michael O. Moore	*Second Worcester*	*2/3/2017*
John C. Velis	*4th Hampden*	*2/3/2017*
Kevin J. Kuros	*8th Worcester*	*2/3/2017*
Alice Hanlon Peisch	*14th Norfolk*	*2/3/2017*
James Arciero	*2nd Middlesex*	*2/3/2017*
Byron Rushing	*9th Suffolk*	*2/3/2017*
Paul McMurtry	*11th Norfolk*	*2/3/2017*
Paul Brodeur	*32nd Middlesex*	*2/3/2017*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/10/2017*
Christine P. Barber	*34th Middlesex*	*3/17/2017*
Kay Khan	*11th Middlesex*	*3/27/2017*
Sonia Chang-Diaz	*Second Suffolk*	*12/22/2017*

SENATE DOCKET, NO. 768 FILED ON: 1/18/2017

SENATE . . . . . No. 1013

By Ms. Flanagan, a petition (accompanied by bill, Senate, No. 1013) of Jennifer L. Flanagan, Diana DiZoglio, Frank I. Smizik, John W. Scibak and other members of the General Court 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 HOUSE, NO. *1771* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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 151G

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) At least a third of all employees will directly experience health-endangering workplace bullying, abuse, and harassment during their working lives, and this form of 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 deliberate exposure 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", acts, omissions, or both, that a reasonable person would find abusive, based on the severity, nature, and frequency of the conduct, including, but is not limited to: repeated verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature; or the sabotage or undermining of an employee's work performance. It shall be considered an aggravating factor if the conduct exploited an employee's known psychological or physical illness or disability. 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 when an employer or one or more its employees, acting with intent to cause pain or distress to an employee, subjects that employee to abusive conduct that causes physical harm, psychological harm, or both;

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

"Constructive discharge", an adverse employment action where:

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

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

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

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

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

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 violation of said section 3 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 said section 3 at the direction of the employer, under actual or implied 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; or,

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

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

Section 7. (a) Where a party is liable for a violation of 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 pain and suffering, compensation for emotional distress, punitive damages, and attorney's fees.

(b) Where an employer is liable for a violation of said section 3 that did not include an adverse employment action, emotional distress damages and punitive damages may be awarded only when the actionable conduct was extreme and outrageous. This limitation 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 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. (a) Nothing in this chapter shall supersede rights and obligations provided under collective bargaining laws and regulations.

(b) The remedies provided 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.