

HOUSE No. 1615

The Commonwealth of Massachusetts

PRESENTED BY:

Michelle M. DuBois

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 relative to non-disclosure agreements relating to a claim of discrimination, non-payment of wages or benefits, retaliation, harassment or violation of public policy in employment.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---------------------------|------------------------------------|------------------|
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> | <i>1/18/2019</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> | <i>2/1/2019</i> |

HOUSE No. 1615

By Ms. DuBois of Brockton, a petition (accompanied by bill, House, No. 1615) of Michelle M. DuBois and Michael D. Brady relative to non-disclosure agreements relating to a claim of discrimination, non-payment of wages or benefits, retaliation, harassment or violation of public policy in employment. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to non-disclosure agreements relating to a claim of discrimination, non-payment of wages or benefits, retaliation, harassment or violation of public policy in employment.

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. Chapter 149 of the General Laws is hereby amended by adding the
2 following section:-

3 Section 192. (a) For the purposes of this section, the following terms shall have the
4 following meanings, unless the context clearly requires otherwise:-

5 “Retaliatory action”, the discharge, suspension or demotion of an employee, or other
6 adverse employment action taken against an employee in the terms and conditions of
7 employment.

8 (b) Any provision in a settlement agreement between an employer and an employee,
9 including but not limited to a non-disclosure agreement, that waives a substantive or procedural
10 right or remedy of the employee relating to a claim of discrimination, non-payment of wages or

11 benefits, retaliation, harassment or violation of public policy in employment, including but not
12 limited to prohibiting the disclosure of information relative to any such claim shall be valid and
13 enforceable for only 3 years from the date the agreement takes effect.

14 (c) Upon the expiration of the 3 year period pursuant to subsection (b), any such
15 provision may be renewed and such original agreement may be renegotiated upon the agreement
16 of both parties, in writing, to the terms of such renewal or renegotiation. Any such provision
17 renewed pursuant to this subsection shall be valid and enforceable. If such provision is not
18 renewed in accordance with this subsection, the provision shall be deemed void and
19 unenforceable upon the expiration of the 3 year period, and the remainder of the agreement shall
20 remain in effect unless the agreement explicitly provides otherwise or the agreement is
21 renegotiated pursuant to this subsection.

22 (d) This section shall not render void or unenforceable the remainder of the contract or
23 agreement. This section shall not apply to the terms of any collective bargaining agreement
24 between an employer and the bona fide collective bargaining representative of that employer's
25 employees.

26 (e) An employer shall not take any retaliatory action against an employee because the
27 employee does not enter into an agreement that includes a provision deemed void or
28 unenforceable pursuant to this section.

29 (f) Whoever violates this section or enforces or attempts to enforce a provision deemed
30 void and unenforceable under this section shall be liable for reasonable attorney's fees and costs
31 associated with litigation.

32 (g) A person aggrieved by a violation of this section may, within 3 years after such
33 violation, institute a civil action in superior court. All remedies available in common law tort
34 actions shall be available to prevailing plaintiffs. The court may also order the payment of
35 reasonable costs and attorney's fees. The rights and remedies contained in this section shall not
36 be exclusive and shall not preempt other procedures or remedies available.

37 SECTION 2. This act shall apply to all settlement agreements, including but not limited
38 to non-disclosure agreements, entered into, renewed, modified or amended on or after the
39 effective date of this act.