HOUSE . . . . No. 2049

The Commonwealth of Massachusetts

PRESENTED BY:

Lindsay N. Sabadosa and Paul W. Mark

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 wrongful discharge from employment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Lindsay N. Sabadosa	*1st Hampshire*	*1/26/2021*
Paul W. Mark	*2nd Berkshire*	*2/4/2021*
Tami L. Gouveia	*14th Middlesex*	*2/26/2021*
Nika C. Elugardo	*15th Suffolk*	*2/26/2021*
Elizabeth A. Malia	*11th Suffolk*	*3/15/2021*

HOUSE . . . . No. 2049

By Representatives Sabadosa of Northampton and Mark of Peru, a petition (accompanied by bill, House, No. 2049) of Lindsay N. Sabadosa, Paul W. Mark and others relative to wrongful discharge from employment. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1685* OF 2019-2020.]

The Commonwealth of Massachusetts

_____

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

_____

An Act relative to wrongful discharge from 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 150A of the General Laws is hereby amended by adding the

2   following in Section 2-

3   (13) "Constructive discharge" means the voluntary termination of employment by an

4   employee because of a situation created by an act or omission of the employer which an

5   objective, reasonable person would find so intolerable that voluntary termination is the only

6   reasonable alternative. Constructive discharge does not mean voluntary termination because of

7   an employer's refusal to promote the employee or improve wages, responsibilities, or other terms

8   and conditions of employment.

9   (14)   "Discharge" includes a constructive discharge as defined in subsection (1) and any

10   other termination of employment, including resignation, elimination of the job, layoff for lack of

11   work, failure to recall or rehire, and any other cutback in the number of employees for a

12   legitimate business reason.

13   (15)   "Employee" means a person who works for another for hire. The term does not

14   include a person who is an independent contractor.

15   (16)   "Fringe benefits" means the value of any employer-paid vacation leave, sick leave,

16   medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in

17   force on the date of the termination.

18   (17) "Good cause" means reasonable job-related grounds for dismissal based on a failure

19   to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate

20   business reason. The legal use of a lawful product by an individual off the employer's premises

21   during nonworking hours is not a legitimate business reason, unless otherwise proscribed by law.

22   (18) "Lost wages" means the gross amount of wages that would have been reported to the

23   internal revenue service as gross income on form W-2 and includes additional compensation

24   deferred at the option of the employee.

25   SECTION 2. Chapter 150A of the General Laws is hereby amended by adding the

26   following section-

27   Section 3B. Wrongful discharge from employment

28   (a) A discharge is wrongful only if:

29   (i) It was in retaliation for the employee's refusal to violate public policy or for reporting

30   a violation of public policy;

31   (ii) The discharge was not for good cause and the employee had completed the

32   employer's probationary period of employment; or

33   (iii) The employer violated the express provisions of its written personnel policy.

34   (b) (i) During a probationary period of employment, the employment may be terminated

35   at the will of either the employer or the employee on notice to the other for any reason or for no

36   reason.

37   (ii) If an employer does not establish a specific probationary period or provide that there

38   is no probationary period prior to or at the time of hire, there is a probationary period of six

39   months from the date of hire.

40   (c) (i) If an employer has committed a wrongful discharge, the employee may be awarded

41   lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge,

42   together with interest on the lost wages and fringe benefits. Interim earnings, including amounts

43   the employee could have earned with reasonable diligence, must be deducted from the amount

44   awarded for lost wages. Before interim earnings are deducted from lost wages, there must be

45   deducted from the interim earnings any reasonable amounts expended by the employee in

46   searching for, obtaining, or relocating to new employment.

47   (ii) The employee may recover punitive damages otherwise allowed by law if it is

48   established by clear and convincing evidence that the employer engaged in actual fraud of actual

49   malice in the discharge of an employee in violation of Section 3B(a)(i).

50   (iii) There is no right under any legal theory to damages for wrongful discharge under

51   this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or

52   any other form of damages, except as provided in this section.

53   (iv) An action under this part must be filed within one year after the date of discharge.

54   (d) This part does not apply to a discharge:

55   (i) That is subject to any other state or federal statute that provides a procedure or remedy

56   for contesting the dispute. The statutes include those that prohibit discharge for filing complaints,

57   charges, or claims with administrative bodies or that prohibit unlawful discrimination based on

58   race, national origin, sex, age, disability, creed, religion, political belief, color, marital status, and

59   other similar grounds;

60   (ii) An employee covered by a written collective bargaining agreement or a written

61   contract of employment for a specific term;

62   (iii) Except as provided in the section, no claim for discharge may arise from tort or

63   express or implied contract.