

SENATE No. 1200

The Commonwealth of Massachusetts

PRESENTED BY:

Paul R. Feeney

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 while promoting healthy workplaces.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/24/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/24/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/26/2021</i>
<i>Daniel R. Carey</i>	<i>2nd Hampshire</i>	<i>2/27/2021</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/27/2021</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>3/2/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>3/2/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>3/2/2021</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>3/3/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/3/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/3/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>3/3/2021</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>3/4/2021</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>3/5/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/8/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>4/1/2021</i>

<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/1/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>4/7/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>4/20/2021</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>5/11/2021</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>1/24/2022</i>

SENATE No. 1200

By Mr. Feeney, a petition (accompanied by bill, Senate, No. 1200) of Paul R. Feeney, Harriette L. Chandler, Elizabeth A. Malia, James J. O'Day and other members of the General Court for legislation to address workplace bullying, mobbing, and harassment, without regard to protected class status while promoting healthy workplaces. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

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

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 healthy
7 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;

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

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

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

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

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

25 (b) It is the purpose of this chapter:

26 (1) To provide legal relief for employees who have been harmed, psychologically,
27 physically, or economically, by deliberate exposure to abusive work environments;

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

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

32 “Abusive conduct”, acts, omissions, or both, that a reasonable person would find abusive,
33 based on the severity, nature, and frequency of the conduct, including, but is not limited to:
34 repeated verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal, non-
35 verbal, or physical conduct of a threatening, intimidating, or humiliating nature; or the sabotage
36 or undermining of an employee’s work performance. It shall be considered an aggravating factor
37 if the conduct exploited an employee’s known psychological or physical illness or disability. A
38 single act normally shall not constitute abusive conduct, but an especially severe and egregious
39 act may meet this standard. Online communications shall be included in determining whether
40 abusive conduct has occurred;

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

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

47 “Constructive discharge”, an adverse employment action where: (1) the employee
48 reasonably believed he or she was subjected to an abusive work environment; (2) the employee
49 resigned because of that conduct; and (3) the employer was aware of the abusive conduct prior to
50 the resignation and failed to stop it.

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

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

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

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

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

63 (b) Where the alleged violation of said section 3 does not include an adverse employment
64 action, it shall be an affirmative defense for an employer only that:

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

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

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

71 (b) It shall be an affirmative defense for an employee only that the employee committed a
72 violation of said section 3 at the direction of the employer, under actual or implied threat of an
73 adverse employment action.

74 SECTION 6. It shall be an affirmative defense that:

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

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

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

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

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

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

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

93 SECTION 9. (a) Nothing in this chapter shall supersede rights and obligations provided
94 under collective bargaining laws and regulations.

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