HOUSE DOCKET, NO. 2569 FILED ON: 1/19/2023

HOUSE . . . . . No. 1882

The Commonwealth of Massachusetts

PRESENTED BY:

Jessica Ann Giannino and Carol A. Doherty

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 to establish psychological workplace safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Jessica Ann Giannino	*16th Suffolk*	*1/19/2023*
Carol A. Doherty	*3rd Bristol*	*1/21/2023*
Michael D. Brady	*Second Plymouth and Norfolk*	*1/23/2023*
Steven Owens	*29th Middlesex*	*1/23/2023*
Nick Collins	*First Suffolk*	*1/24/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*1/27/2023*
Lydia Edwards	*Third Suffolk*	*1/30/2023*
Sally P. Kerans	*13th Essex*	*2/1/2023*
James C. Arena-DeRosa	*8th Middlesex*	*2/1/2023*
David Henry Argosky LeBoeuf	*17th Worcester*	*2/1/2023*
Patricia A. Duffy	*5th Hampden*	*2/2/2023*
Susannah M. Whipps	*2nd Franklin*	*2/2/2023*
Samantha Montaño	*15th Suffolk*	*2/4/2023*
Christopher Hendricks	*11th Bristol*	*2/6/2023*
Adrian C. Madaro	*1st Suffolk*	*2/6/2023*
Patrick M. O'Connor	*First Plymouth and Norfolk*	*2/7/2023*
James K. Hawkins	*2nd Bristol*	*2/8/2023*
David Allen Robertson	*19th Middlesex*	*2/8/2023*

Tricia Farley-Bouvier	*2nd Berkshire*	*2/8/2023*
Natalie M. Higgins	*4th Worcester*	*2/9/2023*
Natalie M. Higgins	*4th Worcester*	*2/9/2023*
Christine P. Barber	*34th Middlesex*	*2/9/2023*
Kate Donaghue	*19th Worcester*	*2/14/2023*
Edward R. Philips	*8th Norfolk*	*2/14/2023*
Daniel M. Donahue	*16th Worcester*	*2/15/2023*
James Arciero	*2nd Middlesex*	*2/15/2023*
James B. Eldridge	*Middlesex and Worcester*	*2/16/2023*
Mathew J. Muratore	*1st Plymouth*	*2/16/2023*
Rodney M. Elliott	*16th Middlesex*	*2/16/2023*
Daniel Cahill	*10th Essex*	*2/17/2023*
Patrick Joseph Kearney	*4th Plymouth*	*2/22/2023*
Shirley B. Arriaga	*8th Hampden*	*2/22/2023*
Simon Cataldo	*14th Middlesex*	*2/24/2023*
Danillo A. Sena	*37th Middlesex*	*2/28/2023*
Angelo J. Puppolo, Jr.	*12th Hampden*	*3/2/2023*
Michelle M. DuBois	*10th Plymouth*	*3/2/2023*
Thomas M. Stanley	*9th Middlesex*	*3/12/2023*
Michael P. Kushmerek	*3rd Worcester*	*3/16/2023*
Jason M. Lewis	*Fifth Middlesex*	*3/22/2023*
Estela A. Reyes	*4th Essex*	*3/28/2023*
David F. DeCoste	*5th Plymouth*	*3/30/2023*
Adrianne Pusateri Ramos	*14th Essex*	*4/3/2023*
Margaret R. Scarsdale	*1st Middlesex*	*4/5/2023*
Antonio F. D. Cabral	*13th Bristol*	*5/31/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*7/10/2023*
John F. Keenan	*Norfolk and Plymouth*	*8/2/2023*
Vanna Howard	*17th Middlesex*	*10/31/2023*

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HOUSE . . . . . No. 1882

By Representatives Giannino of Revere and Doherty of Taunton, a petition (accompanied by bill, House, No. 1882) of Jessica Ann Giannino, Carol A. Doherty and others relative to psychological abuse workplace safety. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to establish psychological workplace safety.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 149 of the General Laws is hereby amended by adding the following section:-

Section 204. (a) For the purposes of this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Bullying", interpersonal abuse that operates employee to employee, especially superior to subordinate.

"Employee", any person who renders services to an employer and receives compensation for them including, full and part time paid employees, temporary employees and independent contractors.

"Employer", a person or entity who obtains services from an employee and hires employees for any compensation.

"Mobbing", interpersonal abuse that operates employer to employee.

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

"Psychological abuse", mentally provocative harassment or mistreatment that has the effect of hurting, weakening, confusing or frightening a person mentally or emotionally.

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

"Reasonable person", an unbiased person who displays reason, fairness, caution and care.

"Representative employee", administrative employees in leadership or management positions whose responsibility is to oversee and enforce organizational policies including, but not limited to, chief executive officers, chief financial officer, presidents, vice presidents, executive directors, members of a board of directors or employees in human resources.

"Third party", a neutral person with no prior affiliation with the parties.

"Toxic work environment", an intolerable employment condition in which a reasonable person would find it a difficult, uncomfortable or impossible environment to perform their workplace duties and tasks.

(b) This section shall apply to all employees regardless of the nature of their job.

(c) Every employee shall have the right to a work environment that is safe, affords them the dignity to which all human beings are entitled and free from all forms of psychological abuse.

(d) Employers have a general duty to: (i) provide a safe work environment free from all forms of abuse including psychological abuse; and (ii) ensure that all employees are treated respectfully and with dignity.

(e)(1) It shall be an unlawful employment practice:

(i) for any employer or employee to engage in the psychological abuse of another employee during or outside the course or scope of their work that creates a toxic work environment in which a reasonable person would find intolerable to perform their regular workplace duties and tasks, has the ability to cause subsequent injury or jeopardizes future career prospects without just cause. The determination of psychological abuse shall be conducted from the view of a reasonable person under the totality of the circumstances, its impact on the work environment of the employee and its subsequent impact on the employee's well-being. There is no requirement of extreme, outrageous or repetitive behavior on the part of the offender to be unlawful. The creation of a toxic work environment, subsequent or potential injury and damage to future career prospects shall suffice regardless of protected class status;

(ii) to retaliate in any manner against an employee who has opposed any unlawful employment practices under this section including, but not limited to, filing a claim internally or externally on behalf of oneself or another objecting to behavior in violation of this section whether as an complainant, witness or advocate; and

(iii) to require any complainant under this section to enter into mediation, forced arbitration, a non-disclosure agreement or any agreement for the employer to see or review the complainant's medical history not pertinent to the complaint, unless willingly disclosed and consented by the complainant.

(2) Behaviors that constitute psychological abuse shall include, but are not limited to:

(i) Subtle or blatant unethical and unprofessional behavior directed in a targeted or systematic manner such as sabotage; misrepresentation of employee performance or behavior; spreading of lies; discipline that does not follow procedure; withholding of vital information; verbal or written abuse or abusive gestures; frequent request for work below competence level; long-term assigning of tasks beyond the employee's duties without compensation; requesting to take part in illegal activity; public or group humiliation or degradation; consistent taking credit for work; public ridicule; exclusion from work related gatherings or communications; inconsistent following or enforcement of rules; placing in dangerous or physically threatening working conditions; hostile yelling, shouting or physical gestures and postures; outright physical abuse, such as pushing and shoving; looking into or disclosing of private facts about the employee or their family; behaviors without just cause, degrading role changes that could jeopardize future career prospects, exclusion, physical isolation, ignoring, regular inconsistent instructions, unreasonably heavy workloads, unreasonable put downs, excessive monitoring, threat of dismissal, removal of job duties, tampering with or spying on equipment or personal belongings.

(ii) Employer non-response or prolonged response to employee complaints of psychologically abusive behavior; rigged internal protocol; unethical communication such as

misrepresenting a complaint process; misrepresenting an investigatory process; hollow investigations; misrepresenting findings in subsequent reports; blame shifting; ignoring continued and escalating bullying behavior or the reporting employee's request for assistance.

(iii) Employer failure to provide a safe working environment; failure to acknowledge employee complaints of abusive behavior; failure to provide a transparent reporting system; failure to adequately address employee complaints; failure to remove a known stressors; failure to alter or stabilize the work environment; tolerance or increase of abusive behavior by representing employees.

(3) Behavior that does not constitute psychological abuse includes, but is not limited to:

(i) acts intended to exercise a supervisor's authority to discipline with just cause and conducted in a progressive disciplinary manner in compliance with policies and laws;

(ii) demands for protecting the confidentiality of the services provided by the employer;

(iii) the formulation or promulgation of regulations or memoranda to direct the operations, maximize efficiency and evaluate employees' performance based on the general objectives of the employer;

(iv) the temporary assignment of additional duties when necessary to ensure the continuity of services;

(v) administrative actions directed to the completion of an employment agreement, with cause;

(vi) employer's affirmative actions to enforce the provisions of a human resources regulation, clauses of employment agreements or obligations, duties and prohibitions established by the General Laws; and

(vii) concerted activity under the federal National Labor Relations Act, 29 U.S.C. §151 et seq, as interpreted by the National Labor Relations Board shall not be construed as psychological abuse.

(f) Every employer shall be responsible for taking all reasonable measures to acknowledge, monitor, prevent, discourage and adequately address incidents of psychological abuse. The employer shall implement and enforce policies, procedures and corrective action plans, including:

(i) adopting and implementing preventive and detective internal policies against psychological abuse including, anti-retaliation policies, within 90 days consistent with this section . Policies should include a broad reporting procedure including, formal and informal reporting methods that include, an employee's right to make a complaint outside of the employer's internal reporting procedures;

(ii) notifying and training all managers, supervisors and other representative employees as to handling of complaints of psychologically abusive behavior including, the employer's reporting provisions and policies to acknowledge, monitor, prevent, discourage and adequately address all such complaints;

(iii) posting employees' rights under this section and employer reporting policies in such a manner that all employees have access including, on the website, bulletin boards, job descriptions and in applicable promotional materials. Any employer who fails to notify and train all managers, supervisors and other representative employees and post notice of employees' rights under this section shall be subject to fines and penalties by not to exceed $100 for each separate offense;

(iv) acknowledging employee complaints of psychologically abusive behavior in writing and initiate a neutral third-party fact-finding professional investigation within 5 business days of a formal or informal complaint of an alleged violation of this section, unless the danger is imminent whereby immediate action is called for. Taking all steps to assure immediate cessation of the alleged violation, which shall be included in the investigatory report including, removing the instigating employee who allegedly violated this section from working with the complainant if necessary. Ensure and monitor complainant's safety through separation from the alleged perpetrator during the investigation and submit weekly written updates of the investigation's progress to the complainant;

(v) implementing and upholding an effective anti-retaliation provision that guarantees no retaliation against any employee who opposes any unlawful practice in a complaint under this section;

(vi) completing the third-party investigation within a reasonable amount of time, such time depending on factors related to the complexity of the complaint. The investigator shall notify the complainant in writing of any delay within a reasonable amount of time. The complainant shall agree on who is chosen as the third party neutral investigator. The investigator

cannot be hired for the purposes of determining the complainant's legal standing or legal advantages and disadvantages;

(vii) a neutral third-party investigator shall establish whether or not the creation of a toxic work environment occurred under this section. The investigator shall also establish whether or not subsequent injury occurred beyond the minimum level of damage under this section;

(viii) when psychological abuse occurs between employees of different employers, all employers concerned shall be responsible for investigating the allegation of psychological abuse, regardless of whether or not they are the direct employer of the complainant;

(ix) if the outcome favors the complainant, issue an apology to the employee, reinstate employee if applicable and coach, counsel or discipline the employee who violated this section;

(x) if another complaint occurs after coaching and is found in favor of the complainant, take the next step in the disciplinary process including, removing supervisory duties from the employee who violated this section or terminate the employee who violated this section;

(xi) applying evaluation and discipline processes evenly and fairly to all employees;

(xii) annually perform an anonymous workplace climate survey. Submit its results to the United States Occupational Safety and Health Administration, the Department of Labor or the department of labor standards annually; and

(xiii) quarterly report the number of employee complaints of abusive behavior, employee disciplines, workers' compensation claims, discrimination complaints, investigations and follow up actions; rates of absenteeism, stress leave and attrition; the workforce gender and racial makeup; and de-identified wage and salary data by protected category to the United States

Occupational Safety and Health Administration and Department of Labor Standards or the department of labor standards, who will make this information publicly available, at a minimum under the federal Freedom of Information Act, 5 U.S.C. § 552.

(g) If the employer proves to have exercised reasonable care to prevent and promptly correct the conduct, such employer shall be held harmless from any claim under the provisions of this section. Such immunity shall not be extended to the person who engaged in psychological abuse in their personal capacity.

(h) The aggrieved employee shall have the following options to notify the employer of the complaint without use of the employer's protocol:

(i) file a restraining order against the employee who violates this section;

(ii) report the alleged violation of this section internally to initiate an internal investigation within 5 days of notification unless the danger is imminent whereby immediate response is called for pursuant to clause (iv) of subsection (f);

(iii) seek outside assistance by filing a complaint that discloses the complainant's identity directly and only to the United States Occupational Safety and Health Administration or the department of labor standards. These offices shall: (1) evaluate the conditions described in the complaint; (2) if it is determined that the complaint describes a potential violation, the case is assigned to an inspector; (3) contact the employer in writing and require the employer to respond by a due date with proof that the hazard has been corrected; or make an appointment for a site visit prioritized according to the nature of the hazard; or phone or visit the workplace the same day if there is imminent danger. Issue fines and/or penalties, including legal action, to violators; (4) make violations of this section available to the public per the Freedom of Information Act,

redacting all private information as to the aggrieved employee and accused, including their names to protect their privacy and not interfere with future job prospects; (5) if applicable, forward the complaint to another agency with jurisdiction; and (6) collect and maintain data on the effectiveness of this section as determined by a decrease in employees self-reporting experiencing psychological abuse at work; and

(iv) sue the employer or individuals in violation of this section.

(i) Any employer that allows, engages in or promotes psychological abuse that creates a toxic work environment shall be liable to the affected employee or employees. Employers shall:

(i) be liable for failing to take the appropriate measures to provide employees with a psychologically safe work environment as outlined in this section;

(ii) be liable for engaging in any violation of this section;

(iii) be liable for any damages including, economic, compensatory and punitive damages, to any employee who has been subjected to work in a toxic work environment as outlined in this section in the scope of their employment, unless the employer can demonstrate they have met all elements of the affirmative defense. An employee is entitled to recover the greater of all actual damages or $5,000 for each violation of this section;

(iv) be strictly liable for all damages including, economic, compensatory and punitive damages, resulting from any prohibited behaviors of this section carried out by a supervisor or representative employee of such employer; and

(v) if not prevailing, be liable for the plaintiff's reasonable attorneys' and witnesses' fees and costs. A prevailing employer shall not be awarded fees and costs.

(j) (1) Any employee, representative or otherwise, who knowingly allows, engages in or promotes psychological abuse creating a toxic work environment or subsequent injury shall be civilly liable for an amount equal to double the amount of damages caused by the improper conduct to the affected employee.

(2) The employee may hold another employee, representative or otherwise, who allows, engages in or promotes psychological abuse creating a toxic work environment or subsequent injury may file a complaint under Rule 3(g) (1) and (2) of the Massachusetts Rules of Criminal Procedure.

(3) It shall not be an affirmative defense for an employee if that employee committed a violation of this section at the direction of the employer or a representative employee under threat of continued employment, termination, or any other such threat. Employers and employees shall be held liable under this section, but an employer or representative employee shall not hold an employee civilly or criminally liable under this section.

(k) Any person who reports psychological abuse shall be protected by this section and no person shall aid, abet, incite, compel or coerce any action in violation of this section including such attempts to do so. An employer shall:

(i) not terminate, sanction, mislead, coerce, intimidate, threaten, interfere with, discriminate against or otherwise retaliate against any person in the opposition of unlawful employment practices or exercise of any right under this section including, but not limited to, an employee as to the terms, conditions, compensation, location, benefits or privileges of employment because the employee or witness offers or attempts to offer, verbally or in writing, any testimony, statement, information or claim to a labor union, human resources office,

employer office, legislative, administrative or judicial forum or any other internal or external office or otherwise engages in any other reasonable participation in a claim under this section; and

(ii) show proof of the violation through direct and circumstantial evidence. The employee may bring a prima facie case of violation of the law by proving they reported an incident of workplace psychological abuse and was subsequently terminated, threatened or discriminated against in their employment. Once the foregoing is established, the employer may allege and provide a legitimate and nondiscriminatory ground for the termination. If the employer alleges and provides such grounds, the employee shall show that the ground alleged by the employer was a mere pretext for termination.

(l) An employer may establish an affirmative defense to limit damages for psychological abuse under this section where the employer took all steps outlined in this section to acknowledge, monitor, prevent, discourage and adequately address the issues and complaints surrounding allegations of psychological abuse and exercised reasonable care to prevent and promptly correct any violation in this section or acted with just cause.

(m) An employer shall not be exempt from liability if the employer or its representative employees or supervisors knew or should have known of said conduct and failed to address the allegations of psychological abuse and promptly correct the situation. This defense shall not be available when the employer or its representative employees or supervisors engage in this conduct.

(n) Complainants who prove a violation of this section shall be entitled to all remedies necessary to make such complainants whole. Such remedies shall factor whether a toxic work

environment existed or whether or not injury resulted. Remedies shall include, but not be limited to:

(i) an apology to the complainant employee and mandatory training, coaching, counseling or discipline for violators of this section who remain with the employer;

(ii) reinstatement of work;

(iii) removal of the employee who violated this section from supervisory duties or termination of said employee;

(iv) economic damages for lost wages, both front pay up to 24 months and back pay;

(v) expenses related to treatment related to the psychological abuse including, future medical expenses for psychological injury or resulting physical injury;

(vi) compensable damages to compensate for the resulting pain and suffering and emotional and psychological damages;

(vii) punitive damages to deter future acts of psychological abuse;

(viii) injunctive relief whereby the court may enjoin the defendant from engaging in the unlawful employment practice;

(ix) public notification of the case outcome without disclosing the plaintiff's name if desired by the plaintiff;

(x) attorney's fees for the prevailing plaintiff; and

(xi) any other relief deemed appropriate, including such restorative measures as modification of the disciplinary record of the employee or organizational training.

(o) Any person who has a cause of action under the provisions of this section shall have 300 days to file said cause of action from the last alleged psychologically abusive behavior from the employee with the United States Occupational Safety and Health Administration, the Department of Labor Standards or the department of labor standards or a private cause of action. If a claimant files a complaint with the United States Occupational Safety and Health Administration or the Department of Labor Standards or the department of labor standards, the statute of limitations for filing a private cause of action is tolled.

(p) Any judicial proceeding instituted for violations of the provisions of this section, the aggrieved person may choose to bring their cause of action through the summary proceeding.

(q) Nothing under this law shall restrict workers from negotiating broader protections via collective bargaining or other concerted activity.

SECTION 2. This act shall take effect 180 days after its passage.