

SENATE No. 1152

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 employment protections for victims of abusive behavior.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>Norfolk and Middlesex</i>	
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/14/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/15/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/6/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>3/6/2023</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>4/13/2023</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Hampden</i>	<i>4/18/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>5/22/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>5/25/2023</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Plymouth and Bristol</i>	<i>10/26/2023</i>
<i>Lydia Edwards</i>	<i>Third Suffolk</i>	<i>11/27/2023</i>

SENATE No. 1152

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1152) of Cynthia Stone Creem, Patrick M. O'Connor, Michael O. Moore, James B. Eldridge and others for legislation relative to employment protections for victims of abusive behavior. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1173 OF 2021-2022.]

The Commonwealth of Massachusetts

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

An Act relative to employment protections for victims of abusive behavior.

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. Section 1 of Chapter 151B of the General Laws is hereby amended by
2 inserting the following terms: -

3 24. The term “victim of abusive behavior” in subsections 1 through 3 of section 4 of this
4 chapter, including section 1F, means a person who is experiencing or has experienced abusive
5 behavior.

6 25. The term “abusive behavior” in this section and subsections 1 through 3 of section 4
7 of this chapter, including subsection 1F, means (i) any behavior constituting domestic violence;
8 (ii) stalking in violation of section 43 of chapter 265; (iii) sexual assault, which shall include a
9 violation of sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B,

26D, 50 or 51 of chapter 265 or sections 2, 3, or 35A of chapter 272; or (iv) kidnapping in violation of the third paragraph of section 26 of chapter 265.

26. The term “domestic violence” in this section means abuse against a person by (i) the person’s current or former spouse; (ii) someone with whom the person shares a child in common; (iii) someone with whom the person is or was cohabitating; (iv) someone with whom the person is related by consanguinity, adoption, or marriage; (v) someone with whom the person has or had an intimate, sexual, or romantic relationship or to whom the person is or was engaged to be married; or (vi) someone with whom the person is or was in a guardianship relationship.

27. The term “abuse” in this section means (i) attempting to cause or causing physical harm; (ii) placing another in fear of imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations by force, threat, or duress; (iv) engaging in psychological, emotional, or mental abuse; (v) depriving another of health care, housing, food, or other necessities of life; (vi) engaging in harassment as defined in section 1 of chapter 258E; or (vii) restraining the liberty of another.

28. The term “psychological, emotional, or mental abuse” in this section means a pattern of threatening, humiliating, or intimidating actions that is designed to induce or likely to induce fear or terror or to restrict another person’s ability to exercise free will or autonomy, including but not limited to unreasonably engaging in any of the following as part of such a pattern:

(i) Isolating another person from friends, family, or other sources of support;

(ii) Limiting another person’s access to or use of family or personal money or financial resources;

(iii) Controlling, regulating, or monitoring the another person’s activities, movements, communications, daily behavior, finances, economic resources, or access to services;

(iv) Belittling, degrading, or demeaning another person;

(v) Threatening to harm, to sexually assault or kill another or another person’s family member;

(vi) Threatening to publish personal or false information about another person or to make false reports to law enforcement authorities about another person;

(vii) Damaging another person’s property or household goods; or

(viii) Forcing another person to take part in criminal activity or child abuse.

29. The term “family member” in subsection 1F of section 4 of chapter 151B means (i) a spouse of the employee or prospective employee; (ii) a person with whom the employee or prospective employee has a child in common; (iii) a person with whom the employee or prospective employee has a substantive intimate, romantic, or sexual relationship, or a dependency relationship, and with whom the employee or prospective employee resides; (iv) a person to whom the employee or prospective employee is engaged to be married; (v) a parent, step-parent, child, step-child, sibling, step-sibling, grandparent, step-grandparent, grandchild, or step-grandchild of the employee or prospective employee; or (vi) a person with whom the employee or prospective employee is or was in a guardianship relationship.

30. The term “prospective employee” in subsection 1F of section 4 of chapter 151B means a person who (i) has applied for employment with the employer, (ii) has been personally

asked to apply for employment with the employer by the employer or employer's agent, or (iii) has been offered employment with the employer, even if conditional.

31. The term "health care" in this section and in subsection 1F of section 4 of chapter 151B includes medical health care, mental health care, substance abuse services, hospital care, dental health care and rehabilitative services.

SECTION 2. Section 4 of Chapter 151B of the General Laws is hereby amended, in subsection (1), after the word "ancestry" by inserting the following: - "status as a victim of abusive behavior,".

SECTION 3. Section 4 of Chapter 151B of the General Laws is further amended, in subsection (2), after the word "information," by inserting the following: - "pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, status as a victim of abusive behavior,".

SECTION 4. Section 4 of Chapter 151B of the General Laws is further amended, in subsection (3), before the phrase "or status as a veteran", by inserting "status as a victim of abusive behavior" and before the phrase "status as a veteran" by inserting "status as a victim of abusive behavior,".

SECTION 5. Section 4 of Chapter 151B of the General Laws is further amended by inserting the following subsection: -

(1F) (a) For an employer, by itself or its agent, not to provide a reasonable accommodation to an employee or prospective employee who is experiencing or has experienced abusive behavior, or whose family member is experiencing or has experienced abusive behavior,

if the employee or prospective employee requests an accommodation related to the abusive behavior; provided, however, that an employer is not required to provide an accommodation if the employer can demonstrate that the accommodation would impose an undue hardship on the employer's business.

(b) For an employer, by itself or its agent, to (i) discharge, or in any other manner discriminate against, an employee for exercising the employee's rights under this subsection, including requesting or using an accommodation under this subsection; (ii) refuse to hire, or in any other manner discriminate against, a prospective employee for exercising the prospective employee's rights under this subsection, including requesting or using an accommodation under this subsection; (iii) require an employee or prospective employee who requests an accommodation under this subsection to accept an accommodation that the employee or prospective employee chooses not to accept if that accommodation is unnecessary to enable the employee to perform the essential functions of the job; (iv) require an employee to take leave if a reasonable accommodation may be provided that permits the employee to perform the essential functions of the job without undue hardship to the employer's business; or (v) make preemployment inquiry of a prospective employee as to whether the prospective employee will require a reasonable accommodation under this subsection, unless the prospective employee first voluntarily discloses to the employer, or employer's agent, a situation that would qualify the prospective employee for a reasonable accommodation under this section.

(c) As used in this subsection, the following words shall have the following meanings unless the context clearly requires otherwise:

“Accommodation” means a temporary or permanent adjustment to a job structure or schedule, workplace facility, or work requirement that enables an employee who is a victim of abusive behavior, or whose family member is a victim of abusive behavior, to be safe or to address issues directly related to the abusive behavior, including but not limited to (i) more frequent or longer paid or unpaid breaks; (ii) transfers, reassignments, or schedule changes; (iii) changing a work phone number, email address, or any other work contact, electronic or otherwise; (iv) installing or changing locks or work access mechanisms; (v) assisting with documentation of the abusive behavior; (vi) implementing safety procedures; or (vii) prohibiting the perpetrator of the abusive behavior from being on the workplace property or limiting the perpetrator’s access to the workplace property or portion thereof where the employee works; provided, however, that an employer shall not be required as part of providing a reasonable accommodation to discharge or transfer another employee or promote an employee who is not able to perform the essential functions of the job with or without a reasonable accommodation.

“Undue hardship” shall mean an action requiring significant difficulty or expense; provided, however, that the employer shall have the burden of proving undue hardship; provided further, that in making a determination of undue hardship, the following factors shall be considered: (i) the nature and cost of the needed accommodation; (ii) the overall financial resources of the employer; (iii) the overall size of the business of the employer with respect to the number of employees and the number, type and location of its facilities; and (iv) any other impact of the reasonable accommodation on the employer’s business.

(d) Upon the employer’s receipt of a request from an employee or prospective employee for an accommodation under this subsection, the employee or prospective employee and the

115 employer shall engage in a timely, good faith, and interactive process to determine an effective,
116 reasonable accommodation.

117 (e) All employers will provide written notice to their employees of the right to be free
118 from discrimination due to status as a victim of abusive behavior and of the right to a reasonable
119 accommodation related to the abusive behavior. Such notice may be provided in a handbook,
120 pamphlet, or other means of notice regularly used by the employer. In addition, all employers
121 will provide such notice to (i) all new employees at the beginning of their employment and (ii)
122 any employee or prospective employee who informs the employer that the employee, or
123 prospective employee or family member of the employee or prospective employee, is a victim of
124 abusive behavior not more than five days after the employer is so informed.

125 (f) Subject to appropriation, the commission shall develop courses of instruction and
126 conduct public education efforts as necessary to inform employers, employees, and employment
127 agencies, and, to the extent possible, the general population, about the rights and responsibilities
128 established under this subsection not more than 180 days after the appropriation. Employers are
129 encouraged to conduct an education and training program for new employees and members
130 within one year of commencement of employment that includes information on the nature and
131 extent of abusive behavior, issues of privacy and confidentiality, and the availability of
132 reasonable accommodations. Employers are encouraged to conduct additional training for new
133 supervisory and managerial employees within one year of commencement of employment that
134 includes information on the nature and extent of abusive behavior, issues of privacy and
135 confidentiality, and the availability of reasonable accommodations.

(g) This subsection shall not be construed to preempt, limit, diminish, or otherwise affect any other law relating to leave or to abusive behavior, provided, however, that to the extent the reasonable accommodation requested pursuant to this section is a leave of absence, that leave need not exceed the amount of leave permitted under section 52E of chapter 149.

(h) An employer may require any employee or prospective employee requesting an accommodation under this subsection to provide documentation evidencing that the employee, the prospective employee, or a family member of the employee or the prospective employee is a victim of abusive behavior; provided, however, that an employer may not require the employee or prospective employee to produce, but may consider, documentation concerning the reasonable accommodation itself, including its type, form, scope, or duration; provided further, that an employer shall not require the employee or prospective employee to show evidence of an arrest, conviction, or other law enforcement documentation for such abusive behavior. The employee or prospective employee shall provide such documentation to the employer within a reasonable period after the employer requests such documentation, such reasonable period not to be shorter than 30 days. The employer must provide a reasonable accommodation in a timely manner and may not delay providing reasonable accommodation pending receipt of the documentation; provided that if the employee or prospective employee requests that the accommodation begin before such documentation can be provided, the employee or prospective employee shall provide the documentation to the employer within 30 days of requesting the accommodation. The employer may periodically require the employee to provide documentation showing continued need for any temporary accommodation, but no more often than every six months or when the employer learns of a significant change in the situation that necessitated the accommodation. The provision of any documentation provided to an employer under this paragraph does not waive or

159 diminish the confidential or privileged nature of communications between a victim of abusive
160 behavior and one or more individuals named in this paragraph.

161 The employer may maintain any documentation provided under this paragraph only in a
162 separate, confidential file and only for as long as required for the employer to make a
163 determination as to whether the employee is entitled to a reasonable accommodation under this
164 subsection.

165 The employee or prospective employee shall satisfy the documentation requirement by
166 providing any one of the following documents to the employer concerning the abusive behavior
167 against the employee, prospective employee, or family member of the employee or prospective
168 employee, and the employer may not require the employee or prospective employee to provide a
169 specific type of documentation from among the following documents:

170 (1) A protective order, or an order of equitable relief or other documentation, issued by a
171 court of competent jurisdiction as a result of such abusive behavior, including but not limited to
172 an order issued pursuant to chapter 209A or chapter 258E;

173 (2) A document under the letterhead of a court, public agency, or social service, health
174 care, or other service provider that the victim of such abusive behavior attended for the purposes
175 of acquiring assistance as it relates to the abusive behavior;

176 (3) A police report or statement of a victim or witness provided to police, including a
177 police incident report, documenting such abusive behavior;

(4) Documentation that the perpetrator of such abusive behavior has been convicted of, has been adjudicated a juvenile delinquent by reason of, or has admitted to sufficient facts to support a finding of guilt of any offense constituting such abusive behavior;

(5) Documentation of health care treatment as a result of such abusive behavior;

(6) A sworn statement, signed under the penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate, or other professional who has assisted the victim of such abusive behavior in addressing the effects of such abusive behavior;

(7) A sworn statement, signed under the penalties of perjury, from the victim of such abusive behavior attesting to such abusive behavior; or

(8) Any other form of documentation or relevant evidence that reasonably corroborates or certifies that the employee, prospective employee, or family member of the employee or prospective employee is a victim of abusive behavior.

(i) An employee or prospective employee requesting an accommodation under this subsection is not required to produce any documentation to, or discuss any information with, the employer that would in any way compromise the safety of the victim of the abusive behavior, and an employer is prohibited from requiring any such production or disclosure except to the extent such documentation or information is necessary to provide or effectuate the accommodation, to protect the safety of the employee or others employed at the workplace, or to enable the employer to satisfy legal obligations.

(j) An employer shall maintain the confidentiality of all documentation and information provided by the employee or prospective employee related to the abusive behavior, including that the employee, prospective employee, or employee's family member is a victim of abusive behavior or that the employee or prospective employee has requested or obtained a reasonable accommodation under this subsection, except under the following conditions: (i) the employee or prospective employee requests or consents in writing that such documentation or information be disclosed; (ii) the employer is ordered by a court of competent jurisdiction or administrative agency to disclose such documentation or information; (iii) disclosure is otherwise required by applicable federal or state law; (iv) disclosure is required in the course of an investigation authorized by law enforcement, including, but not limited to, an investigation by the attorney general; or (v) disclosure is necessary to protect the safety of the employee or others employed at the workplace or to provide or effectuate the accommodation.

(k) No employer shall (i) coerce, interfere with, restrain, or deny the exercise of, or any attempt to exercise, any rights provided under this subsection or (ii) make reasonable accommodations requested or taken hereunder contingent upon whether or not the employee, prospective employee, or victim of the abusive behavior maintains contact with the alleged abuser.

SECTION 6. Section 52E of Chapter 149 of the General Laws is hereby amended by striking out subsection (a) in its entirety and thereby replacing it with the following subsection:

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

“Abuse,” (i) attempting to cause or causing physical harm; (ii) placing another in fear of imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations by force, threat, or duress; (iv) engaging in psychological, emotional, or mental abuse; (v) depriving another of health care, housing, food, or other necessities of life; (vi) engaging in harassment as defined in section 1 of chapter 258E; or (vii) restraining the liberty of another.

“Abusive behavior,” (i) any behavior constituting domestic violence; (ii) stalking in violation of section 43 of chapter 265; (iii) sexual assault, which shall include a violation of sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 26D, 50 or 51 of chapter 265 or sections 2, 3, or 35A of chapter 272; or (iv) kidnapping in violation of the third paragraph of section 26 of chapter 265.

“Domestic violence,” abuse against a person by (i) the person’s current or former spouse; (ii) someone with whom the person shares a child in common; (iii) someone with whom the person is or was cohabitating; (iv) someone with whom the person is related by consanguinity, adoption, or marriage; (v) someone with whom the person has or had an intimate, sexual, or romantic relationship or to whom the person is or was engaged to be married; or (vi) someone with whom the person is or was in a guardianship relationship.

“Employees”, individuals who perform, or who have been hired to perform, services for and under the control and direction of an employer for wages or other remuneration.

“Family member,” (i) a spouse of the employee or prospective employee; (ii) a person with whom the employee or prospective employee has a child in common; (iii) a person with whom the employee or prospective employee has a substantive intimate, romantic, or sexual relationship, or a dependency relationship, and with whom the employee or prospective

employee resides; (iv) a person to whom the employee or prospective employee is engaged to be married; (v) a parent, step-parent, child, step-child, sibling, step-sibling, grandparent, step-grandparent, grandchild, or step-grandchild of the employee or prospective employee; or (vi) a person with whom the employee or prospective employee is or was in a guardianship relationship.

“Psychological, emotional, or mental abuse,” a pattern of threatening, humiliating, or intimidating actions that is designed to induce or likely to induce fear or terror or to restrict another person’s ability to exercise free will or autonomy, including but not limited to unreasonably engaging in any of the following as part of such a pattern:

Isolating another person from friends, family, and other sources of support;

(i) Isolating another person from friends, family, and other sources of support;

(ii) Limiting another person’s access to or use of family or personal money or financial resources;

(iii) Controlling, regulating, or monitoring another person’s activities, movements, communications, daily behavior, finances, economic resources, or access to services;

(iv) Belittling, degrading, or demeaning another person;

(v) Threatening to harm, to sexually assault or to kill another or another person’s family member;

(vi) Threatening to publish personal or false information about another person or to make false reports to law enforcement authorities about another person;

(vii) Damaging another person's property or household goods; or

(viii) Forcing another person to take part in criminal activity or child abuse.

"Prospective employee", a person who (i) has applied for employment with the employer, (ii) has been personally asked to apply for employment with the employer by the employer or employer's agent, or (iii) has been offered employment with the employer, even if conditional.

"Health care", medical health care, mental health care, substance abuse services, hospital care, dental health care, rehabilitative services and other similar services.

SECTION 7. Subsection (b)(ii) of Section 52E of Chapter 149 of the General Laws is hereby amended, after the word "attention", by inserting the following: - "or other health care,".

SECTION 8. Subsection (d) of Section 52E of Chapter 149 of the General Laws is hereby amended by inserting, in the first sentence, after the phrase "safety of an employee", the following phrase: - "or family member of the employee," and by striking out the figure "(7)" and thereby replacing it with the figure "(8)".

SECTION 9. Subsection (e) of Section 52E of Chapter 149 of the General Laws is hereby amended by striking out the subsection in its entirety and replacing it with the following subsection: -

(e) An employer may require an employee or prospective employee requesting leave under this section to provide documentation evidencing that the employee, prospective employee, or family member of the employee or prospective employee is a victim of abusive behavior and that the leave taken is consistent with the conditions of clauses (i) to (iii), inclusive, of subsection (b); provided, however, that an employer shall not require an employee or

prospective employee to show evidence of an arrest, conviction or other law enforcement documentation for such abusive behavior. An employee or prospective employee shall provide such documentation to the employer within a reasonable period after the employer requests documentation relative to the employee's absence. An employee or prospective employee shall satisfy this documentation requirement by providing any 1 of the following documents to the employer, and the employer may not require the employee or prospective employee to provide a specific type of documentation from among the following documents.

(1) A protective order, or order of equitable relief or other documentation, issued by a court of competent jurisdiction as a result of abusive behavior, including but not limited to an order issued pursuant to chapter 209A or chapter 258E.

(2) A document under the letterhead of the court, public agency, or social service, health care, or other service provider which the victim of the abusive behavior attended for the purposes of acquiring assistance as it relates to the abusive behavior.

(3) A police report or statement of a victim or witness provided to police, including a police incident report, documenting the abusive behavior.

(4) Documentation that the perpetrator of the abusive behavior has been convicted of, has been adjudicated a juvenile delinquent by reason of, or has admitted to sufficient facts to support a finding of guilt of any offense constituting such abusive behavior

(5) Documentation of health care treatment as a result of the abusive behavior.

(6) A sworn statement, signed under the penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other

professional who has assisted the victim of the abusive behavior in addressing the effects of the abusive behavior.

(7) A sworn statement, signed under the penalties of perjury, from the victim of the abusive behavior attesting to the abusive behavior.

(8) Any other form of documentation or relevant evidence that reasonably corroborates or certifies that the employee, prospective employee, or family member of the employee or prospective employee is a victim of abusive behavior.

Any documentation provided to an employer under this section may be maintained by the employer only in a separate, confidential file and only for as long as required for the employer to make a determination as to whether the employee is eligible for leave under this section. The provision of any documentation to an employer under this paragraph does not waive or diminish the confidential or privileged nature of communications between the victim of the abusive behavior and any of the categories of professionals listed in this paragraph.

An employee or prospective employee requesting leave under this section is not required to produce any documentation to, or discuss any information with, the employer that would in any way compromise the safety of the victim of the abusive behavior, and an employer is prohibited from requiring any such production or disclosure except to the extent such documentation or information is necessary to provide or effectuate the leave, to protect the safety of the employee or others employed at the workplace, or to enable the employer to satisfy legal obligations.

323 SECTION 10. Subsection (f)(i) of Section 52E of Chapter 149 of the General Laws is
324 hereby amended by inserting, after the word “employee”, the words “or prospective employee;”
325 and inserting, after the word “workplace”, the words “or to provide or effectuate the leave”.

326 SECTION 11. Subsection (g) of Section 52E of Chapter 149 of the General Laws is
327 hereby amended by striking the word “taking” and thereby replacing it with the word “seeking”.

328 SECTION 12. Subsection (h) of Section 52E of Chapter 149 of the General Laws is
329 hereby amended by inserting, after the word “victim”, the phrase “of the abusive behavior”, and
330 after the words “this section or” by striking out the word “to”.

331 SECTION 13. Subsection (i) of Section 52E of Chapter 149 of the General Laws is
332 hereby amended by inserting, after the word “section”, the phrase “or refuse to hire, or in any
333 other manner discriminate against a prospective employee for exercising the prospective
334 employee’s rights under this section.”