

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Menard

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 passage of the accompanying bill:

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

PETITION OF:

NAME:

Ms. Menard

DISTRICT/ADDRESS:

First Bristol and Plymouth

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT ADDRESSING WORKPLACE BULLYING, MOBBING, AND HARASSMENT,
WITHOUT REGARD TO PROTECTED CLASS STATUS.

*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. The General Laws are hereby amended by inserting after chapter 151E the following
2 chapter:-

3 Chapter 151F

4 THE HEALTHY WORKPLACE

5 Section 1 -- Preamble

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7 (a) Findings

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9 The General Court finds that:

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11 (1) The social and economic well-being of the Commonwealth is dependent upon healthy and
12 productive employees;

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14 (2) Between 37 and 59 percent of employees directly experience health-endangering workplace
15 bullying, abuse, and harassment, and this mistreatment is approximately four times more prevalent than
16 sexual harassment alone;

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

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

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

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

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34 (7) Existing workers' compensation plans and common-law tort actions are inadequate to
35 discourage this behavior or to provide adequate relief to employees who have been harmed by abusive work
36 environments.

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38 (b) Purpose

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40 It is the purpose of this Chapter:

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42 (1) To provide legal relief for employees who have been harmed, psychologically, physically, or
43 economically, by being deliberately subjected to abusive work environments;

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

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49 Section 2 -- Definitions

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51 (a) Abusive work environment. An abusive work environment exists when the defendant, acting with
52 malice, subjects an employee to abusive conduct so severe that it causes tangible harm to the employee.

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54 (1) Abusive conduct. Abusive conduct is conduct, including acts, omissions, or both, that a
55 reasonable person would find hostile, based on the severity, nature, and frequency of the defendant's conduct.
56 Abusive conduct may include, but is not limited to: repeated infliction of verbal abuse such as the use of
57 derogatory remarks, insults, and epithets; verbal or physical conduct of a threatening, intimidating, or
58 humiliating nature; the sabotage or undermining of an employee's work performance; or attempts to exploit a
59 employee's known psychological or physical vulnerability. A single act normally will not constitute abusive
60 conduct, but an especially severe and egregious act may meet this standard.

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62 (2) Malice. Malice is defined as the desire to cause pain, injury, or distress to another.

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64 (b) Tangible harm. Tangible harm is defined as psychological harm or physical harm.

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66 (1) Psychological harm. Psychological harm is the material impairment of a person's mental
67 health, as established by competent evidence.

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69 (2) Physical harm. Physical harm is the material impairment of a person's physical health or
70 bodily integrity, as established by competent evidence.

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72 (c) Adverse employment action. An adverse employment action includes, but is not limited to, a
73 termination, demotion, unfavorable reassignment, failure to promote, disciplinary action, or reduction in
74 compensation.

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76 (d) Constructive discharge. A constructive discharge shall be considered a termination, and, therefore,
77 an adverse employment action within the meaning of this Chapter. A constructive discharge exists where:
78 (1) the employee reasonably believed he or she was subjected to abusive conduct; (2) the employee resigned
79 because of that abusive conduct; and, (3) prior to resigning, the employee brought to the employer's attention
80 the existence of the abusive conduct and the employer failed to take reasonable steps to correct the situation.

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83 Section 3 – Unlawful Employment Practices

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85 (a) Abusive Work Environment. It shall be an unlawful employment practice under this Chapter to
86 subject an employee to an abusive work environment as defined by this Chapter.

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88 (b) Retaliation. It shall be an unlawful employment practice under this Chapter to retaliate in any
89 manner against an employee who has opposed any unlawful employment practice under this Chapter, or who
90 has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under
91 this Chapter, including, but not limited to, internal complaints and proceedings, arbitration and mediation
92 proceedings, and legal actions.

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95 Section 4 – Employer Liability and Defense

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97 (a) An employer shall be vicariously liable for an unlawful employment practice, as defined by this
98 Chapter, committed by its employee.

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100 (b) Where the alleged unlawful employment practice does not include an adverse employment action, it
101 shall be an affirmative defense for an employer only that:

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

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

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111 Section 5 – Employee Liability and Defense

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113 (a) An employee may be individually liable for an unlawful employment practice as defined by this
114 Chapter.

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116 (b) It shall be an affirmative defense for an employee only that the employee committed an unlawful
117 employment practice as defined in this Chapter at the direction of the employer, under threat of an adverse
118 employment action.

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120 Section 6 – Affirmative Defenses

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122 It shall be an affirmative defense that:

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

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

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129 (c) The complaint is based on a defendant’s reasonable investigation about potentially illegal or
130 unethical activity.

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133 Section 7 -- Relief

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135 (a) Relief generally. Where a defendant has been found to have committed an unlawful employment
136 practice under this Chapter, the court may enjoin the defendant from engaging in the unlawful employment

137 practice and may order any other relief that is deemed appropriate, including, but not limited to,
138 reinstatement, removal of the offending party from the complainant's work environment, back pay, front pay,
139 medical expenses, compensation for emotional distress, punitive damages, and attorney's fees.

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141 (b) Employer liability. Where an employer has been found to have committed an unlawful employment
142 practice under this Chapter that did not culminate in an adverse employment action, its liability for damages
143 for emotional distress shall not exceed \$25,000, and it shall not be subject to punitive damages. This
144 provision does not apply to individually named employee defendants.

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147 Section 8 -- Procedures

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149 (a) Private right of action. This Chapter shall be enforced solely by a private right of action.

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151 (b) Time limitations. An action commenced under this Chapter must be commenced no later than one
152 year after the last act that constitutes the alleged unlawful employment practice.

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155 Section 9 – Effect on Other Legal Relationships

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157 The remedies provided for in this Chapter shall be in addition to any remedies provided under any other law,
158 and nothing in this Chapter shall relieve any person from any liability, duty, penalty or punishment provided
159 by any other law, except that if an employee receives workers' compensation for medical costs for the same
160 injury or illness pursuant to both this Chapter and the workers' compensation law, or compensation under
161 both this Chapter and that law in cash payments for the same period of time not working as a result of the
162 compensable injury or illness or the unlawful employment practice, the payments of workers' compensation
163 shall be reimbursed from compensation paid under this Chapter.

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