

HOUSE No. 02309

The Commonwealth of Massachusetts

PRESENTED BY:

Frank I. Smizik

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:	DISTRICT/ADDRESS:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>

HOUSE No. 02309

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 2309) of Wolf and Smizik for legislation to protect employees from workplace bullying, mobbing and harassment
Joint Committee on Labor and Workforce Development.

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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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
- 2 following chapter:-
- 3 Chapter 151F
- 4 THE HEALTHY WORKPLACE
- 5 Section 1 -- Preamble
- 6 (a) Findings
- 7 The General Court finds that:
- 8 (1) The social and economic well-being of the Commonwealth is dependent upon
- 9 healthy and productive employees;

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

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

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

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

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

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

29 (b) Purpose

30 It is the purpose of this Chapter:

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

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

35 Section 2 -- Definitions

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

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

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

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

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

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

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

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

63 Section 3 – Unlawful Employment Practices

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

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

71 Section 4 – Employer Liability and Defense

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

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

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

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

80 Section 5 – Employee Liability and Defense

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

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

86 Section 6 – Affirmative Defenses

87 It shall be an affirmative defense that:

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

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

91 (c) The complaint is based on a defendant's reasonable investigation about potentially illegal
92 or unethical activity.

93 Section 7 -- Relief

94 (a) Relief generally. Where a defendant has been found to have committed an unlawful
95 employment practice under this Chapter, the court may enjoin the defendant from engaging in
96 the unlawful employment practice and may order any other relief that is deemed appropriate,
97 including, but not limited to, reinstatement, removal of the offending party from the
98 complainant's work environment, back pay, front pay, medical expenses, compensation for
99 emotional distress, punitive damages, and attorney's fees.

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

105 Section 8 -- Procedures

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

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

109 Section 9 – Effect on Other Legal Relationships

110 The remedies provided for in this Chapter shall be in addition to any remedies provided under
111 any other law, and nothing in this Chapter shall relieve any person from any liability, duty,

112 penalty or punishment provided by any other law, except that if an employee receives workers'
113 compensation for medical costs for the same injury or illness pursuant to both this Chapter and
114 the workers' compensation law, or compensation under both this Chapter and that law in cash
115 payments for the same period of time not working as a result of the compensable injury or illness
116 or the unlawful employment practice, the payments of workers' compensation shall be
117 reimbursed from compensation paid under this Chapter.